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February 21, 2022

Chief Justice Tani G. Cantil-Sakauye and
Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4783

Re: Supreme Court Case No. S273160: Amicus Curiae Letter in Opposition to
the Petition for Review in *Save Berkeley's Neighborhoods v. The Regents of
the University of California (American Campus Communities)*

Dear Honorable Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to Rule 8.500(g) of the California Rules of Court, Berkeley
Citizens for a Better Plan respectfully requests that the Supreme Court deny
the Petition for Review of Order Denying Petition for Writ of Supersedeas
and Request for Immediate Stay ("Petition") filed in *Save Berkeley's
Neighborhoods v. The Regents of the University of California (American
Campus Communities)*, Supreme Court Case No. S273160.

The Petition seeks a stay of the judgment in this case, which prohibits
Petitioner The Regents of the University of California ("the Regents") from
enrolling more students in 2022-2023 than were enrolled in 2020-2021. This
limit on enrollment is essential to ensure that the Regents comply with their
legal obligations to analyze and mitigate the impacts of their enrollment
plans pursuant to Public Resources Code section 21080.9 and Education Code
section 67504, for the reasons set forth in *Save Berkeley's Neighborhoods'*
Answer to Petition for Review.

Berkeley Citizens for a Better Plan submits this letter to correct a
number of misleading assertions in the Regents' Reply to Answer to Petition
for Review of Order Denying Petition for Writ of Supersedeas ("Regents'
Reply") and in amicus curiae letters submitted by Governor Newsom, the
City of Berkeley, and others.

Document received by the CA Supreme Court.

1. Statement of Interest of Amicus Curiae

Berkeley Citizens for a Better Plan (BC4BP) was formed by a group of concerned citizens and community groups after the University of California, Berkeley (UCB), released its 2021 Long Range Development Plan (LRDP) effective until 2037. BC4BP advocates for a better plan that resolves problems with the 2021 LRDP, including negative environmental impacts, and serves the interests of UCB and Berkeley citizens even beyond 2037. BC4BP and its affiliate groups have over 1100+ members.

In its lawsuit filed on August 19, 2021, BC4BP challenged the 2021 LRDP Environmental Impact Report (EIR) in Alameda County Superior Court (Action No. 21109910) on the grounds that it did not meet the requirements of the California Environmental Quality Act (CEQA). The 2021 LRDP EIR shares many of the same defects as the SEIR in the instant case, including failing to adequately analyze and mitigate negative environmental impacts from proposed enrollment growth.

BC4BP is concerned that if the Court lifts the enrollment cap on the instant case, which predates BC4BP's case, UCB will add further enrollment now before the appellate court rules on the merits of the instant case. If that were to happen, the superior court hearing BC4BP's case would not realistically be able to undo that further enrollment growth even if the appellate court in the instant case affirms Judge Seligman's decision and remedy. No trial judge would be pleased to order that UCB remove already enrolled students.

2. The Court should deny the Petition and request for immediate stay

The Regents and its amicus curiae attempt to litigate this Petition based on political posturing and sounds bites rather than law and the facts.

The Regents assert that Save Berkeley's Neighborhoods ("SBN"), and by extension the community in which UC Berkeley is located, would not suffer any harm or lose the benefits of the enrollment cap if a stay is issued because "UC Berkeley has already analyzed and mitigated for enrollment growth in 2022-2023 and beyond in the 2021 update to its LRDP." (Regents' Reply, 5.) This assertion is misleading because this purported "analysis and mitigation" is currently subject to litigation in three separate lawsuits that

challenge the legality this purported “analysis and mitigation” on grounds that it fails to comply with CEQA. Attached hereto are true and correct copies of the three Petitions for Writ of Mandate that are currently pending in Alameda Superior Court. (Exh. A.)

These lawsuits may well take years to resolve, just as the appeal in the instant case may take years to resolve. During the pendency of the instant litigation, the Regents raised enrollment by approximately 3000 students, and the LRDP contemplates another 3000. In addition, the Regents added almost 9000 students from 2005 to 2018 without any environmental analysis.

Therefore, limiting enrollment now is necessary to make the trial court’s Judgment effective, because limiting enrollment gives the Regents an incentive to expeditiously and lawfully conduct CEQA review of the increased enrollment. Not limiting enrollment would allow the Regents to produce one flawed CEQA analysis after another, ad infinitum, without any adverse consequence.

The Governor asserts that “The impact of restricting admission to UC Berkeley could forever change the lives of over 5,000 students, especially students from disadvantaged backgrounds.” This overblown sound bite ignores several basic truths.

First, there is no reason to believe that students who do not attend UC Berkeley will not attend a different university, including other UC’s, and thereby obtain the benefits of a high quality college education. Thus, UC’s implicit assertion that a student might suffer detriment by attending a different university is entirely speculative.

Second, there is no evidence that whatever speculative detriment might be caused by students attending different universities would fall disproportionately on students from disadvantaged backgrounds. According to UC’s own data, during the period of UC Berkeley’s greatest enrollment increases, students from disadvantaged backgrounds enrolled at UC Berkeley greatest, as measured by Pell Grant recipients, fell from 34% of undergraduates to 26%. (See data downloaded on February 21, 2022, from UC’s website at universityofcalifornia.edu/about-us/information-center/fall-

enrollment-glance) BC4BP requests that the Court take judicial notice of this data pursuant to Evidence Code section 452(c).

Third, the logical conclusion of the Governor’s contention is that the Regents should increase enrollment, not by 5,000 students, but by 10,000 or even 20,000 more students; because failing to do so will “forever change the lives of those not admitted, especially students from disadvantaged backgrounds.”

The absurdity of this logical conclusion brings us to the heart of the matter. The Regents vaguely allude to constraints they consider when determining enrollment targets, i.e., the “complex algorithm” referenced by Mr. Ogundele in his declaration. (This complex algorithm has never been disclosed, so cannot be evaluated.) But the Regents do not consider the absence of student housing or the impact of students exacerbating the housing shortage in the surrounding community to be one of those constraints. This is untenable, especially because in the 2018-19 academic year, UCB failed to provide housing for 46,125 students, faculty, and staff, with unaccommodated students making up 30,736 of that total; and in 2036-37, UCB projects that it will fail to provide housing for 46,574 students, faculty, and staff, with unaccommodated students making up 20,045 of that total. (Lippe Decl, Ex 4, 160 [LRDP DEIR p. 5.12-19].)

Moreover, gentrification in Berkeley and Oakland, which UC Berkeley’s enrollment increases exacerbate, continues to push low-income households (i.e., people from “disadvantaged backgrounds”) out of the area. (Declaration of David Shiver in Support of Answer to Petition for Review ¶’s 2-17.) These low income households are disproportionately people of color.

The Governor also asserts that “The lower court’s enrollment restriction may require impacted students to incur far more student debt to obtain a similar education at a private university, or require them to enroll at another school with similar tuition (which inevitably would have ripple effects to applicants to those other campuses).” This is pure speculation unsupported by a shred of evidence.

The City of Berkeley asserts that “Because the 2020-2021 school year had abnormally low enrollment due to the pandemic, the result of this

judgment would be to deny more than 5,000 qualified students the opportunity to attend University of California, Berkeley (“UC Berkeley”) this fall.” The City ignores the fact that while the Regents objected to the enrollment cap, they did not object to using the 2020-21 enrollment as the point of reference for setting the cap. (CT 765-771; Regents’ Compendium of Exhibits, Ex 15, 375-381.) Therefore, the Regents waived this objection. (*Findleton v. Coyote Valley Band of Pomo Indians* (2018) 27 Cal.App.5th 565, 569 [“It is well established that appellate courts will ordinarily not consider errors that ‘could have been, but were not raised below’”].)

The City also asserts that the cap would impose harm “on the broader Berkeley community and local economy.” While adding another 3000 students to Berkeley may result in a small economic boost, the damage from further displacement and increasing homelessness far outweighs the small economic benefit. Building affordable housing for 3000 additional Berkeley residents, in order to keep them from displacement would cost somewhere around \$700,000 per unit, or 2.1 billion dollars. By contrast, UC's new luxury dorm, Anchor House, will house 700 students at a cost of approximately \$300 million.

3. UCB’s enrollment growth without adequate mitigation has far more negative impacts on Berkeley than the State Governor, the Berkeley Mayor, and the public recognize

In its Petition, UCB argues that if the Court does not grant a stay on the enrollment cap, a plethora of harms will occur, everything from smaller class sizes to thousands of students losing out on a world-class education. (Pet., pp. 24-25.) The Governor goes a step further and states: “We can’t let a lawsuit get in the way of the education and dreams of thousands of students who are our future leaders and innovators. I urge the Supreme Court to step in to ensure we are expanding access to higher education and opportunity, not blocking it.” (<https://www.dailycal.org/2022/02/18/ca-gov-gavin-newsom-supports-uc-berkeley-in-ongoing-enrollment-case/>.) Ironically after suing UCB under CEQA, the Mayor of Berkeley stated: “I do not think the city should stand in the way of UC making progress in addressing our housing crisis and preventing future generations of students from getting a world-class education. The 2021 LRDP will result in more student housing,

academic space and support services to address the needs of a growing student population.” All of these arguments have in common that it is the Court, and by extension CEQA, not anything else, that has brought us to this point of calamity where graduating high school students will soon pay the price for judicial malfeasance. The facts are quite different.

The harm to Berkeley started with the decades long state funding cutbacks for UC, setting in motion the Regents looking for ways to replace those missing funds. The overall approach at UCB and large universities across the country with the same state funding cutback problem has been to “plunder” their host cities as a way to regain the lost income.

In his book, *In the Shadow of the Ivory Tower – How Universities Are Plundering Our Cities*¹, Davarian Baldwin, an urban studies professor at Trinity College describes how large universities such as UCB have preyed on their host cities in three ways: land, labor, and police. As with UCB, universities have moved off campus and into cities by competing for land purchases. UCB has artificially raised rents by continuously introducing thousands of students into the Berkeley rental market, pricing out nonstudents, most of whom are minorities and resulting in housing displacement. These are the same minorities UCB touts as “helping” by increasing enrollment.

One of the three petitions challenging the 2021 LRDP EIR was brought by AFSCME, the labor union that serves UCB and other UC campuses. The union members include low paid workers who can no longer afford housing anywhere near the campus due to the high rental market. As Professor Baldwin explains in his book, universities also look for ways to get around union contracts with “sub-contractors” all as part of cutting expenses to meet overhead. So, the labor market is significantly harmed because UCB and other large universities pay low wages but because of the escalating cost of housing, the primarily minority workers have to pay increasing gas costs just to get to work as they live further away from the job sites. On the one hand

¹Bold Type Books, published in 2021.

UCB offers high school minorities a chance for a world class education while at the same time, depriving their parents of a living wage.

Even campus police hired by large universities are harmful. Professor Baldwin’s research demonstrates that they increase inequality by arresting nonstudents, which puts them into the criminal justice system while typical student crimes such as drug and sex offenses are handled by the university administration.

A major source of harm that UCB fully exploits is financial – either adding so many student residents to Berkeley with inadequate funds to provide for their public service usage or forcing the host citizens to pay for it. As a nonprofit, UCB does not pay taxes on its properties, including those that are used for non-educational purposes. Berkeley’s Mayor and City Council refuse to collect those taxes or even the parking taxes owed by UCB under this Court’s recent decision in *City and County of San Francisco v. The Regents of the University of California* (2019) 7 Cal. 5th 536. Those taxes are needed to help those in need, mostly low income minorities.

According to the City of Berkeley, *Draft Memorandum, Preliminary Fiscal Impact Analysis of UC Berkeley in 2018*, dated March 27, 2019, and prepared by Economic Planning Systems, Inc. (“EPS”), the amount of money Berkeley residents will need to pay for back stopping UCB’s finances would amount to approximately \$23.5 million over 15 years. The EPS analysis was based upon 40,955 students in academic year 2017-2018. Based upon these data from the City of Berkeley commissioned study, the per student fiscal deficit was -\$523 (\$21.4 million/40,955 students). Without accounting for subsequent inflation, the increase of 3,000 students would cost the City of Berkeley approximately \$1,569,000 in additional costs over revenues. Thus, a total of approximately \$23.5 million over 15 years.

Judge Seligman, a well-respected superior court judge, did not prohibit UCB from growing. The court only stayed further enrollment increases until UCB demonstrated in a sufficient EIR that it had a plan to mitigate many of the adverse environmental impacts on its host city. The trial court, and now this Court are not responsible for the continuous failings of UCB, Governor

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Newsom, and the Berkeley Mayor to work together in solving the financial and environmental issues rather than piling them onto the heads of the host city's nonstudent residents and workers.

Accordingly, the Court should deny UCB's request for a stay.

Respectfully submitted,

Leila H. Moncharsh

Leila H. Moncharsh
Veneruso & Moncharsh
Attorney for BC4BP

Document received by the CA Supreme Court.

EXHIBIT A

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17 Attorneys for Petitioners Make UC A Good Neighbor and
18 The People's Park Historic District Advocacy Group

19 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **IN AND FOR THE COUNTY OF ALAMEDA**

21 MAKE UC A GOOD NEIGHBOR, a California
22 nonprofit public benefit corporation; and THE
23 PEOPLE'S PARK HISTORIC DISTRICT
24 ADVOCACY GROUP, a California nonprofit
25 public benefit corporation,
26 Petitioners,

27 vs.

28 THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA; MICHAEL V. DRAKE, in his
capacity as President of the University of
California; UNIVERSITY OF CALIFORNIA,
BERKELEY; CAROL T. CHRIST, in her capacity
as Chancellor of the University of California,
Berkeley; and DOES 1 through 20,
Respondents,

RESOURCES FOR COMMUNITY
DEVELOPMENT, a California Corporation, and
DOES 21 through 40,
Real Parties in Interest.

**ENDORSED
FILED
ALAMEDA COUNTY**

OCT 28 2021

CLERK OF THE SUPERIOR COURT

By _____
Deputy

CHRISTNA ROGERS

Case No. RG21110142

**FIRST AMENDED AND SUPPLEMENTAL
PETITION FOR WRIT OF MANDATE**

[CEQA]

Assigned for all purposes to the Honorable Frank
Roesch, Department 17

Trial date: None

Petitioners Make UC A Good Neighbor and The People's Park Historic District Advocacy Group allege:

1. On or about July 22, 2021, Respondent Regents of the University of California certified a Final Environmental Impact Report (EIR) prepared for the 2021 Long Range Development Plan for the UC Berkeley campus (LRDP), Housing Project # 1, and Housing Project # 2. On or about July 22, 2021, Respondent Regents of the University of California approved the LRDP and Housing Project # 1. On or about September 30, 2021, Respondent Regents of the University of California approved Housing Project # 2. The LRDP, Housing Project # 1 and Housing Project # 2 are collectively referred to herein as the "Project."

2. This action challenges Respondents' approval of the Project on grounds the Project approvals violate the California Environmental Quality Act (CEQA).

3. Education Code section 67504 provides that "The Legislature further finds and declares that the expansion of campus enrollment and facilities may negatively affect the surrounding environment. Consistent with the requirements of the California Environmental Quality Act (CEQA), it is the intent of the Legislature that the University of California sufficiently mitigate significant off-campus impacts related to campus growth and development."

4. Public Resources Code section 21080.09, subdivision (b) requires that "Environmental effects relating to changes in enrollment levels shall be considered for each campus or medical center of public higher education in the environmental impact report prepared for the long range development plan for the campus or medical center." Public Resources Code section 21080.09, subdivision (d) requires that Respondents and the University of California, Berkeley "consider the environmental impact of academic and enrollment plans" pursuant to CEQA and "that any such plans shall become effective for a campus ... only after the environmental effects of those plans have been analyzed" as required by CEQA.

Parties

5. Petitioner MAKE UC A GOOD NEIGHBOR is a California nonprofit public benefit corporation formed to provide education and advocacy related to the impacts of UC Berkeley on the surrounding environment. Plaintiff's founders, directors, supporters, patrons, contributors, advisors, and members live in the area affected by the Project's environmental effects, and will suffer injury from adverse environmental impacts caused by this Project if the legal violations alleged herein are not remedied. Plaintiff was formed and brings this action to represent and advocate for the beneficial interests of its

1 founders, directors, supporters, patrons, contributors, advisors, and members in obtaining relief from the
2 legal violations alleged herein and to improve quality of life, protect the environment and implement
3 best planning practices in connection with UC Berkeley's increases in student enrollment and expansion
4 of infrastructure.

5 6. Petitioner THE PEOPLE'S PARK HISTORIC DISTRICT ADVOCACY GROUP is a California
6 nonprofit public benefit corporation formed to establish a People's Park Historic District to protect,
7 preserve, and enhance public understanding of the significant architectural and cultural landmarks and
8 historic events unique to the Southside campus area of the University of California, Berkeley, through
9 outreach, research, and educational and cultural community projects. Plaintiff's founders, directors,
10 supporters, patrons, contributors, advisors, and members live in the area affected by the Project's
11 environmental effects, and will suffer injury from adverse environmental impacts caused by this Project
12 if the legal violations alleged herein are not remedied. Plaintiff was formed and brings this action to
13 represent and advocate for the beneficial interests of its founders, directors, supporters, patrons,
14 contributors, advisors, and members in obtaining relief from the legal violations alleged herein and to
15 improve quality of life, protect the environment and implement best planning practices in connection
16 with UC Berkeley's increases in student enrollment and expansion of infrastructure.

17 7. Respondent THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (hereinafter "Regents")
18 is a public trust corporation and state agency established pursuant to the California Constitution vested
19 with administering the University of California including the management and disposition of property of
20 the University and the lead agency for the 2021 LRDP under CEQA, and is thus responsible for
21 analyzing, disclosing, and mitigating the environmental impacts of the 2021 LRDP, including its
22 increase in student enrollment and local populations at the UC Campus and facilities.

23 8. Respondent MICHAEL V. DRAKE is the President of the University of California and is named
24 herein solely in this capacity. Regents' Policy 8103 delegates to the President of the University the
25 Regents' authority for budget or design for capital projects consistent with approved Long Range
26 Development Plans and minor Long Range Development Plan amendments.

27 9. Respondent CAROL T. CHRIST is the Chancellor of the University of California, Berkeley, and
28 named herein solely in this capacity.

10. Respondents Regents, Michael V. Drake, and Carol T. Christ are hereinafter collectively referred
to as "Respondents."

1 11. Real party in Interest Resources for Community Development is named herein as a real party in
2 interest because it is identified as a “party carrying out the project” in Respondents’ CEQA Notice of
3 Determination for Housing Project # 2. Petitioners are informed and believe that Resources for
4 Community Development is a California Corporation.

5 12. Petitioners do not know the true names and capacities of Respondents fictitiously named herein
6 as DOES 1 through 20, inclusive, or Real Parties in Interest fictitiously named herein as DOES 21
7 through 40. Petitioners are informed and believe, and thereon allege, that such fictitiously named
8 Respondents or Real Parties in Interest are responsible in some manner for the acts or omissions
9 complained of or pending herein. Petitioners will amend this Petition to allege the fictitiously named
10 Respondents’ or Real Parties in Interests’ true names and capacities when ascertained.

11 **Notice Requirements**

12 13. Respondents filed a Notice of Determination for the LRDP and Housing Project #1 with the
13 Governor’s Office of Planning and Research on July 22, 2021, and that Notice was posted on July 23,
14 2021. Petitioners filed their original Petition for Writ of Mandate in this matter challenging
15 Respondents’s approvals of the LRDP and Housing Project #1 on August 20, 2021. Respondents filed a
16 Notice of Determination for Housing Project #2 with the Governor’s Office of Planning and Research on
17 September 30, 2021, and that Notice was posted on September 30, 2021.

18 14. In accordance with Public Resources Code section 21167.5, Petitioners served Respondents with
19 written notice of commencement of their original Petition for Writ of Mandate on August 20, 2021.
20 Said Notice of Commencement of Action and Proof of Service are attached hereto as Exhibit 1; and
21 Petitioners served Respondents with written notice of commencement of this Amended and
22 Supplemental Petition for Writ of Mandate on October 12, 2021. Said Notice of Commencement of
23 Action and Proof of Service are attached hereto as Exhibit 1.1.

24 15. In accordance with Public Resources Code section 21167.7 and Code of Civil Procedure section
25 388, Petitioners have provided a copy of their original Petition for Writ of Mandate and this pleading to
26 the Attorney General’s office. (See Exhibits 2 and 2.1 attached hereto.)

27 **Jurisdiction and Venue**

28 16. Petitioners bring this action in mandamus pursuant to Code of Civil Procedure sections 1085,
1088.5, and 1094.5, and Public Resources Code sections 21168 and 21168.5. The Court has jurisdiction
over these claims.

1 17. Venue is proper in Alameda County pursuant to Code of Civil Procedure section 393(b) because
2 the Project's environmental impacts will occur in Alameda County and Code of Civil Procedure section
3 394, subdivision (a), because the University of California, Berkeley, and Respondents are situated
4 therein.

5 **Standing**

6 18. Petitioners and, to the extent applicable, their founders, directors, supporters, patrons,
7 contributors, advisors, and members are beneficially interested in Respondents' full compliance with
8 CEQA. Respondents owed a mandatory duty to comply with CEQA with respect to the Project and the
9 increase in student enrollment projected in the Project EIR. Petitioners have the right to enforce the
10 mandatory duties that CEQA imposes on Respondents.

11 **Exhaustion of Administrative Remedies**

12 19. Respondents' approval of the Project is final and not subject to further administrative appeal
13 procedures.

14 20. In accord with Public Resources Code section 21177, subdivision (b), Petitioners objected to
15 Respondents' approval of the Project orally or in writing during the public comment period or prior to
16 the close of the public hearing on the Project before the filing of any Project-related Notice of
17 Determination.

18 21. In accordance with Public Resources Code section 21177, subdivision (a), all alleged grounds for
19 non-compliance with CEQA that are alleged herein were presented to Respondents during the public
20 comment period for, or prior to the close of the public hearing on, the Project.

21 22. In the alternative, pursuant to Public Resources Code section 21177, subdivision (e), there was
22 no opportunity for members of the public to raise the grounds of noncompliance alleged in this Petition
23 prior to Respondents' approval of the Project.

24 **Private Attorney General Doctrine**

25 23. Petitioners bring this action as private attorneys general pursuant to Code of Civil Procedure
26 section 1021.5, and any other applicable legal theory, to enforce important rights affecting the public
27 interest.

28 24. Issuance of the relief requested herein will confer a significant benefit on a large class of persons
by ensuring that Respondents complete adequate environmental review of the Project's environmental
effects.

1 25. Issuance of the relief requested herein will result in the enforcement of important rights affecting
2 the public interest. By compelling Respondents to complete adequate environmental review or
3 mitigation of the Project's environmental effects, Petitioners will vindicate the public's important CEQA
4 rights to public disclosure regarding and public participation in government decisions that affect the
5 environment.

6 26. The necessity and financial burden of enforcement are such as to make an award of attorney's
7 fees appropriate in this proceeding because the transgressor is the agency whose duty it is to enforce the
8 laws at issue in this proceeding.

9 **First Cause of Action**

(Violation of CEQA: Pub. Resources Code, § 21000 et seq.)

10 27. Petitioners hereby reallege and incorporate the preceding paragraphs of this Petition and
11 Complaint as though set forth herein in full.

12 28. The paragraphs below refer to and rely on information in documents relating to this action, all of
13 which will be filed with this Court as part of the record of proceedings and which are incorporated by
14 reference.

15 29. Respondents prejudicially abused their discretion in violation of CEQA pursuant to Public
16 Resources Code sections 21168 and 21168.5 and Code of Civil Procedure sections 1085 and 1094.5.

17 30. Respondents violated CEQA because, without limitation, Respondents:

18 a. Certified an EIR that,

- 19 (1) Fails to present stable, accurate, certain project description and to evaluate the
20 whole of the Project;
21 (2) Fails to accurately and sufficiently describe the affected environmental setting of
22 the Project;
23 (3) Fails to include information necessary for informed decision making and informed
24 public participation, including information necessary to reach informed
25 conclusions regarding the significance of the Project's environmental impacts, the
26 identification and effectiveness of mitigation measures to avoid the Project's
27 significant environmental impacts, or the feasibility of mitigation measures to
28 reduce the Project's significant environmental impacts;
(4) Fails to analyze a range of reasonable alternatives;

- 1 (5) Fails to lawfully assess the Project's cumulative effects;
2 (6) Fails to present the best available information;
3 (7) Fails to provide good faith responses to comments on the draft EIR;
4 b. Failed and refused to recirculate a revised draft EIR including said necessary information;
5 c. With respect to the findings required by CEQA at Public Resource Code section 21081,
6 Respondents failed to make required findings, failed to make required findings in accordance
7 with law, failed to support the findings made with substantial evidence, and failed to disclose the
8 analytic route showing how the evidence supports said findings.
- 9 31. These violations of CEQA include, without limitation, the legal errors described in comment
10 letters submitted during the administrative process which are incorporated herein by reference,
11 including, without limitation, the following:
- 12 a. April 21, 2021, comment letter to Respondents on the DEIR from the City of Berkeley
13 Planning and Development Department (Letter A3);
14 b. April 21, 2021, comment letter to Respondents on the DEIR from Make UC A Good
15 Neighbor (Letter B7);
16 c. April 21, 2021, comment letter to Respondents on the DEIR from People's Park Historic
17 District Advocacy Group (Letter B3);
18 d. April 21, 2021, comment letter to Respondents on the DEIR from the American
19 Federation of State, County, and Municipal Employees Local 3299 (Letter B5);
20 e. April 20, 2021, comment letter to Respondents on the DEIR from Berkeley Architectural
21 Heritage Association (Letter B10);
22 f. April 21, 2021, comment letter to Respondents on the DEIR from Berkeley Architectural
23 Heritage Association (Letter B11);
24 g. April 21, 2021, comment letter to Respondents on the DEIR from City of Berkeley
25 Landmarks Preservation Commission (Letter A4);
26 h. April 21, 2021, comment letter to Respondents on the DEIR from Sierra Club (Letter
27 B12);
28 i. April 21, 2021, comment letter to Respondents on the DEIR from the Southside
Neighborhood Consortium (Letter B4);
j. April 21, 2021, comment letter to Respondents on the DEIR from Panoramic Hill

1 Association (Letter B9);

2 k. April 21, 2021, comment letter to Respondents on the DEIR from Lesley Emmington and
3 Gale Garcia (Letter C88);

4 l. April 21, 2021, comment letters to Respondents on the DEIR from Janice Thomas
5 (Letters C81-C84);

6 m. September 24, 2021, comment letter to Respondents from Thomas N. Lippe, re UC's
7 discretionary control over enrollment, with exhibits;

8 n. September 25, 2021, comment letter to Respondents from Thomas N. Lippe, re Noise
9 Impacts, with exhibits;

10 o. September 25, 2021, comment letter to Respondents from Thomas N. Lippe, re Impacts
11 on People's Park Historic District, with exhibits;

12 p. September 25, 2021, comment letter to Respondents from Southside Neighborhood
Coalition, with attachments.

13 32. The EIR fails to lawfully assess the Project's environmental effects caused by increases in
14 enrollment and local populations at the UC Berkeley campus.

15 a. The EIR fails to include accommodating enrollment and local population increases in its
16 statement of objectives.

17 b. The EIR fails to include enrollment and campus population increases in its project
18 description, and it fails to acknowledge Respondents' discretion with regard to enrollment and
19 local population.

20 c. The EIR fails to consider mitigation and alternatives that would reduce significant
21 impacts by reducing, delaying, or capping enrollment and local population increases.

22 d. The EIR fails to adequately or accurately account for enrollment and local population
23 increases.

24 e. The EIR fails to adequately acknowledge and evaluate impacts due to enrollment and
25 local population increases, including, e.g., impacts related to population and housing, public
26 services, public services infrastructure, noise, aesthetics, solid waste, street trash, air quality,
27 vehicle miles traveled, transportation, greenhouse gases, historic and cultural resources, and
wildfire.

28 f. The EIR fails to adequately acknowledge and evaluate impacts due to enrollment and

1 local population increases that may exceed the projections in the EIR, despite Respondents'
2 historical underestimation of such increases.

3 g. The EIR fails to adequately assess the cumulative impacts of past enrollment and local
4 population increases.

5 h. The EIR fails to lawfully describe the Project. For example, the EIR fails to describe the
6 whole of the Project; fails to include increases in enrollment and local population in the project
7 description; and fails to include accommodation of those increases in its statement of project
8 objectives. The EIR's "Project Study Area," identified as the project site, improperly truncates
9 the geographic scope of the project area and analysis. The EIR fails to provide adequate
10 information about the Project to support analysis of its impacts. The EIR improperly includes
11 mitigation measures in the project description.

12 33. The EIR fails to lawfully describe the environmental setting. For example, the EIR fails to
13 provide or justify omission of a setting description based on existing conditions, and it fails to
14 adequately describe the affected environmental setting outside the "EIR Study Area."

15 34. The EIR fails to lawfully analyze environmental effects. For example, the EIR unlawfully relies
16 on the programmatic nature of the EIR to excuse its lack of necessary information and its failure to
17 propose mitigation at a time in which Respondents still have flexibility to devise program-level
18 mitigation and consider broad policy alternatives. The EIR fails to adequately evaluate impacts deemed
19 to be significant and unavoidable. The EIR fails to adequately evaluate effects outside of the "EIR Study
20 Area."

21 35. The EIR's analysis of alternatives omits essential information, including an analysis of a range of
22 reasonable alternatives. For example, the EIR fails to consider alternatives that would reduce, cap, or
23 delay enrollment and local population increases; alternative sites, including sites outside the truncated
24 "EIR Study Area;" alternatives that would build more and denser housing on the proposed sites;
25 alternatives that would preserve or partially preserve historic and cultural resources; and alternatives that
26 would avoid or reduce multiple significant impacts. The EIR fails to provide adequate information
27 about and comparison of alternatives.

28 36. The EIR fails to propose and evaluate adequate mitigation for significant impacts, including, e.g.,
impacts related to population and housing, public services, public services infrastructure, public utilities,
transportation, air quality, greenhouse gases, energy, noise, vehicle miles traveled, and wildfire. For

1 example, the EIR fails to propose mitigation that would reduce, cap, or delay enrollment and local
2 population increases. The EIR improperly defers the formulation of mitigation, relies on vague or
3 unenforceable “Continuing Best Practices,” and fails to identify performance standards. The EIR fails to
4 propose adequate mitigation for impacts it finds significant and unavoidable. The EIR fails to evaluate
5 the significance of impacts with and without the mitigation included in the project description, and it
6 fails to consider alternatives to that mitigation.

7 37. The EIR fails to lawfully assess the Project’s effects on historic and cultural resources. For
8 example, the EIR fails to adequately describe existing conditions at the project site, including the
9 historically significant character of the area surrounding the project site; the EIR provides an incomplete
10 analysis of impacts to identified historic resources; the EIR improperly defers mitigation of significant
11 impacts to identified historic resources; the EIR fails to adequately analyze or mitigate impacts relating
12 to archaeological resources; the EIR fails to analyze alternative building designs and locations that avoid
13 significant impacts on historic and cultural resources; the EIR fails to consider feasible mitigation to
14 avoid or reduce impacts to historic and cultural resources; and the EIR proposes ineffective mitigation
15 for impacts to historic and cultural resources.

16 38. The EIR fails to lawfully assess or mitigate the Project’s effects on air quality.

17 39. The EIR fails to lawfully assess or mitigate the Project’s effects on traffic, transportation, and
18 vehicle miles travelled.

19 40. The EIR fails to lawfully assess or mitigate the Project’s effects on wildfires and wildfire risks.

20 41. The EIR fails to lawfully assess or mitigate the Project’s effects on greenhouse gas emissions and
21 climate change.

22 42. The EIR fails to lawfully assess or mitigate the Project’s effects on noise pollution.

23 43. The EIR fails to lawfully assess or mitigate the Project’s land use effects and inconsistencies with
24 the City’s General Plan and zoning laws and with other applicable regional plans.

25 44. The EIR fails to lawfully assess or mitigate the Project’s effects on population and housing,
26 including effects related to induced growth and housing displacement.

27 45. The EIR fails to lawfully assess or mitigate the Project’s cumulative effects.

28 46. The EIR fails to lawfully assess or mitigate the Project’s effects on public services, utilities,
public service and utilities infrastructure, schools, and public safety.

47. The EIR fails to lawfully assess or mitigate the Project’s effects on energy.

- 1 48. The EIR fails to lawfully assess or mitigate the Project's effects on aesthetics.
2 49. The EIR fails to lawfully assess or mitigate the Project's effects on biological resources.
3 50. The EIR fails to lawfully assess or mitigate the Project's effects on parks and recreation.
4 51. The EIR fails to lawfully assess or mitigate the Project's effects related to radiation.
5 52. The EIR fails to lawfully assess or mitigate the Project's effects related to trash and solid waste.
6 53. The final EIR fails to lawfully provide response to comments on the draft EIR.
7 54. Petitioners have no other plain, speedy, and adequate remedy in the ordinary course of law and
8 will suffer irreparable injury unless this Court issues the relief requested herein.

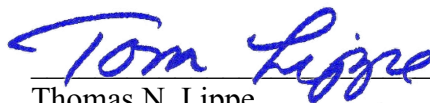
9 **Prayer for Relief**

10 WHEREFORE, Petitioners pray for the following relief:

- 11 55. For a peremptory writ of mandate pursuant to Public Resources Code section 21168.9 and Code
12 of Civil Procedure sections 1085 or 1094.5:
13 a. Ordering Respondents to void their approval of the Project;
14 b. Ordering Respondents to void their certification of the Project EIR;
15 c. Ordering Respondents to suspend Project activities pending compliance with CEQA;
16 d. Ordering Respondents to take any other actions the Court finds necessary to bring its
17 determinations, findings, or decisions on the Project into compliance with CEQA and applicable
18 planning laws;
19 e. Retaining the Court's jurisdiction over this matter until Respondents comply with the
20 peremptory writ of mandate.
21 56. For an order compelling Respondents to pay Petitioners' costs of suit.
22 57. For an order compelling Respondents to pay Petitioners' reasonable attorneys' fees pursuant to
23 Code of Civil Procedure section 1021.5.
24 58. For such other relief as the Court may deem proper.

25 DATED: October 27, 2021

LAW OFFICES OF THOMAS N. LIPPE, APC

26 

27 Thomas N. Lippe
28 Attorney for Petitioners Make UC A Good Neighbor and
The People's Park Historic District Advocacy Group

1 VERIFICATION

2 *Make UC A Good Neighbor; The People's Park Historic District Advocacy Group v. The Regents of the*
3 *University of California*, Alameda County Superior Court, Case No. RG21110142

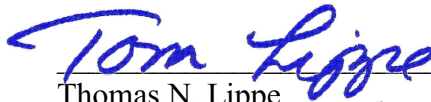
4 I, Thomas N. Lippe, declare that:

5 1. I am an attorney at law duly admitted and licensed to practice before all courts of this State. I am
6 the attorney of record for the Plaintiff in this action.

7 2. Plaintiff has their place of business in Alameda County, California, and therefore are absent from
8 the county in which I have my office. For that reason, I make this verification on its behalf.

9 3. I have read the foregoing Amended and Supplemental Petition for Writ of Mandate and know the
10 contents thereof; the factual allegations therein are true of my own knowledge, except as to those matters
11 which are therein stated upon my information or belief, and as to those matters I believe them to be true.

12 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
13 true and correct. Executed on October 27, 2021, at El Cerrito, California.

14 

15 Thomas N. Lippe

16 Attorney for Petitioners Make UC A Good Neighbor and
17 The People's Park Historic District Advocacy Group

18 P030a LRDP Amended and Supp Petition.wpd
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EXHIBIT 1

Law Offices of
THOMAS N. LIPPE, APC

201 Mission Street
12th Floor
San Francisco, California 94105

Telephone: 415-777-5604
Facsimile: 415-777-5606
Email: Lippelaw@sonic.net

October 12, 2021

By FedEx Overnight and email:
chancellor@berkeley.edu
Chancellor Carol T. Christ
University of California, Berkeley
c/o Jenny Hanson
Executive Assistant to the Chancellor
Office of the Chancellor
200 California Hall, #1500
Berkeley, CA 94720-1500

By email: charles.robinson@ucop.edu
Charles F. Robinson, General Counsel and
Vice President – Legal Affairs
University of California, Office of the
President
1111 Franklin Street, 8th Floor
Oakland, CA 94607

By FedEx Overnight and email:
regentsoffice@ucop.edu
Regents of the University of California
c/o Anne Shaw
Office of the Secretary and Chief of Staff to
the Regents
1111 Franklin St., 12th floor
Oakland, CA 94607

Re: Notice of Intent to Sue Regarding Inadequate CEQA Review of UC Berkeley's Housing Project #2 identified in the Environmental Impact Report prepared for the campus's 2021 Long Range Development Plan and Housing Projects #1 and #2 certified by the Regents in July 2021.

Dear Chancellor Christ and Regents of the University of California and Mr. Robinson:

This office represents Make UC A Good Neighbor and The People's Park Historic District Advocacy Group (Petitioners) with respect to the University of California, Berkeley's legal obligation to conduct environmental review of UC Berkeley's 2021 Long Range Development Plan, Housing Project #1, and Housing Project #2 in compliance with the California Environmental Quality Act (CEQA).

As you know, Petitioners have already filed a lawsuit challenging the Regents approval of UC Berkeley's 2021 Long Range Development Plan and Housing Project #1 on grounds that the approval violates CEQA. That action is entitled *Make UC a Good Neighbor, et al. v. The Regents of the University of California*, Alameda Superior Court, Case No. RG21110142.

This letter provides notice pursuant to Public Resources Code section 21167.5 that Petitioners also intend to file a legal action to challenge the Regents' September 30, 2021,

Chancellor Carol T. Christ, University of California, Berkeley
Regents of the University of California
Charles Robinson
Notice of Intent to Sue Regarding Housing Project #2.
October 12, 2021
Page 2

approval of Housing Project #2 on grounds that the approval violates CEQA.

Petitioners are interested in discussing settlement of this dispute without the need for litigation. Given the short, 30-day statute of limitations that presumably applies here, however, Petitioners will file the action forthwith.

Thank you for your attention to this matter.

Very Truly Yours,



Thomas N. Lippe

cc:

David M. Robinson, Chief Campus Counsel
By email: dmrobinson@berkeley.edu

T:\TL\UCB LRDP\Trial\Pleadings\P031b Ex 1-1 #2 NCAction.wpd

Document received by the CA Supreme Court.

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PROOF OF SERVICE

I am a citizen of the United States, employed in the City and County of San Francisco, California. My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18 years and not a party to the above entitled action. On October 12, 2021, I served the following on the parties below, as designated:


● Notice of Intent to Sue Regarding Inadequate CEQA Review of UC Berkeley's Housing Project #2 identified in the Environmental Impact Report prepared for the campus's 2021 Long Range Development Plan and Housing Projects #1 and #2 certified by the Regents in July 2021

MANNER OF SERVICE

[A] By Overnight FedEx: I caused such envelope to be placed in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.

[B] By Email: I caused such document to be served via electronic mail equipment transmission (Email) on the parties as designated on the attached service list by transmitting a true copy from my email address: kmhperry@sonic.net to the following Email addresses listed under each addressee below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 12, 2021, in the County of Contra Costa, California.


Kelly Marie Perry

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SERVICE LIST

SERVICE LIST	MANNER OF SERVICE
Chancellor Carol T. Christ University of California, Berkeley c/o Jenny Hanson Executive Assistant to the Chancellor Office of the Chancellor 200 California Hall, #1500 Berkeley, CA 94720-1500 Email: <i>chancellor@berkeley.edu</i>	A, B
Regents of the University of California c/o Anne Shaw Office of the Secretary and Chief of Staff to the Regents 1111 Franklin St., 12th floor Oakland, CA 94607 Email: <i>regentsoffice@ucop.edu</i>	A, B
Charles F. Robinson, General Counsel and Vice President – Legal Affairs University of California, Office of the President Email: <i>charles.robinson@ucop.edu</i>	B
David M. Robinson, Chief Campus Counsel Email: <i>dmrobinson@berkeley.edu</i>	B

Document received by the CA Supreme Court.

EXHIBIT 2

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PROOF OF SERVICE

I am a citizen of the United States, employed in the City and County of San Francisco, California. My business address is 201 Mission Street, 12th Floor, San Francisco, CA 94105. I am over the age of 18 years and not a party to the above entitled action. On October 27, 2021, I served the following on the parties below, as designated:

•First Amended and Supplemental Petition for Writ of Mandate

MANNER OF SERVICE

☒ By Overnight FedEx: I caused such envelope to be placed in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.

☐ By Email: I caused such document to be served via electronic mail equipment transmission (Email) on the parties as designated on the attached service list by transmitting a true copy from my email address: kmhperry@sonic.net to the following Email addresses listed under each addressee below.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 27, 2021, in the County of Contra Costa, California.



Kelly Marie Perry

SERVICE LIST

Rob Bonta
Attorney General
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919



25071578

1 MICHAEL R. LOZEAU (Cal. Bar No. 142893)
2 REBECCA L. DAVIS (Cal. Bar No. 271662)
3 BRIAN B. FLYNN (Cal. Bar No. 314005)
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5 1939 Harrison St., Suite 150
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7 Tel: (510) 836-4200
8 Fax: (510) 836-4205
9 E-mail: rebecca@lozeaudrury.com
10 michael@lozeaudrury.com
11 brian@lozeaudrury.com

12 Attorneys for Petitioner and Plaintiff

FILED
ALAMEDA COUNTY

AUG 20 2021

CLERK OF THE SUPERIOR COURT

By  Deputy

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES
LOCAL 3299,

Petitioner and Plaintiff,

vs.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Respondent and Defendant.

UNIVERSITY OF CALIFORNIA,
BERKELEY, and DOES 1-10,

Real Parties in Interest and Defendants.

Case No.: **RG21110157**

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[CEQA, Pub. Res. Code §21000, *et seq.*;
Code of Civil Procedure §§1094.5, 1085]

INTRODUCTION

1. Petitioner American Federation of State, County, and Municipal Employees Local 3299 (“Local 3299” or “Petitioner”) brings this action to challenge the unlawful actions of Respondent The Regents of the University of California in certifying the Environmental Impact Report (“EIR”) for the University of California Berkeley’s (“UC Berkeley”) 2021 Long Range Development Plan Update (“2021 LRDP Update”) and Housing Projects #1 and #2 (collectively, “the Project”), approving the 2021 LRDP Update and Housing Project #1, and making related findings because the EIR fails to satisfy the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 *et seq.*, and the CEQA Guidelines, title 14, California Code of Regulations, § 15000 *et seq.*

2. The Project has three components: (1) the 2021 Long Range Development Plan Update for the University of California, Berkeley campus (“2021 LRDP Update”), (2) Housing Project #1, also referred to as Anchor House, and (3) Housing Project #2, also referred to as People’s Park.

3. UC Berkeley prepared and certified an Environmental Impact Report that included a programmatic-level analysis for the 2021 LRDP Update and a project-level analysis for Housing Projects #1 and #2. To date, the University has approved the 2021 LRDP Update and Housing Project #1 (“Approvals”) but has not approved Housing Project #2.

4. In certifying the EIR, Respondent failed to comply with CEQA. More specifically, Respondent prejudicially abused their discretion and failed to proceed in the manner required by law by certifying an EIR that does not adequately analyze or mitigate the Project’s significant environmental impacts. The EIR also fails to provide a CEQA-compliant alternatives analysis, response to comments, or statement of overriding considerations. As a result of these and other deficiencies, the EIR fails as an informational document.

5. Because the EIR violates CEQA, the Approvals that are reliant upon it must be overturned. Therefore, Petitioner respectfully requests that the Court direct Respondents to set aside the certification of the EIR and associated Project Approvals.

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PARTIES

Petitioner and Plaintiff

6. Petitioner and Plaintiff American Federation of State, County, and Municipal Employees Local 3299 is a public services employee union representing thousands of members throughout the University of California system. Some of those members live, work, and recreate near the UC Berkeley Campus and in Alameda County, including more than 950 who work at UC Berkeley and the Lawrence Berkeley National Lab. Local 3299's members are predominantly people of color and are among the University of California's lowest-paid workers. Local 3299's purposes include advocating for vital services that keep Local 3299 members and their families safe, make their communities strong, and protect the environment.

7. Local 3299 and its members have a direct and beneficial interest in compliance with laws bearing upon approval of the Project. These interests will be directly and adversely affected by the Project, which violate provisions of law as set forth in this Petition and would cause substantial harm to public safety, the natural environment, and the quality of life in the surrounding community. Local 3299 and its members will suffer injury from adverse environmental impacts caused by the construction and operation of the Project if the legal violations alleged in this Petition and Complaint are not remedied. Local 3299 brings this action to represent and advocate for the beneficial interests of its members in obtaining relief from these legal violations and to protect its members' safety, advocate for affordable housing, improve quality of life, protect the environment, and ensure that the University adheres to the requirements of CEQA in evaluating the Project. In addition, increased demand for housing in the area surrounding the proposed Project is likely to harm Local 3299's members who live in the area by raising rents, thereby causing economic injury or displacement or both. Local 3299 actively participated in the Project's administrative approval process. Local 3299 expressed its concerns regarding the Project in writing to the University and urged the University to remedy the EIR's deficiencies and to comply with CEQA.

8. Local 3299 brings this action on behalf of itself, its members, and in the public interest. Issuance of the relief requested in this Petition will confer a significant benefit on the general

1 public by requiring Respondents to carry out its duties under CEQA and other applicable laws before
2 approving the Project. Issuance of the relief requested in this Petition will also result in the
3 enforcement of important rights affecting the public interest by compelling Respondents to engage in
4 a legally adequate analysis of the Project, and to ensure that the public has a meaningful opportunity
5 to review and comment on the impacts and mitigation measures for the Project.

6 9. Local 3299 has no plain, speedy, or adequate remedy in the course of ordinary law
7 unless this Court grants the requested writ of mandate to require Respondent to set aside its
8 certificate of the EIR and the Approvals. In the absence of such remedies, the Regents' decisions
9 will remain in effect in violation of state law and Local 3299 and its members will be irreparably
10 harmed.

11 10. Unless enjoined, Respondent will implement the Project despite its lack of
12 compliance with CEQA. Local 3299 will suffer irreparable harm by Respondent's failure to take the
13 required steps to comply with CEQA's procedures and protect the environment.
14

15 **Respondent and Defendant**

16 11. Respondent The Regents of the University of California ("Regents" or "University") is
17 a public trust corporation and state agency established pursuant to the California Constitution vested
18 with administering the University of California including the management and disposition of facilities
19 at the UC Berkeley Campus. The Regents is the lead agency under CEQA for consideration of
20 certification of the EIR and has principal responsibility for approving the 2021 LRDP Update,
21 Anchor House (also referred herein as "Housing Project #1"), and People's Park (also referred herein
22 as "Housing Project #2").

23 **Real Parties in Interest and Defendants**

24 12. Real Party in Interest University of California, Berkeley, is listed as the applicant on
25 the Notices of Determination for both the 2021 LRDP Update and Anchor House.

26 13. Petitioner and Plaintiff does not know the true names and capacities of Real Parties in
27 Interest and Defendants fictitiously named herein as DOES 1 through 10, inclusive. Petitioner is
28 informed and believes, and thereon alleges, that such fictitiously named Real Parties in Interest and

1 Defendants are responsible in some manner for the acts or omissions complained of or pending
2 herein. Petitioner and Plaintiff will amend this Petition to allege the fictitiously named Real Party in
3 Interest's and Defendants' true names and capacities when ascertained.

4 JURISDICTION AND VENUE

5 14. This Court has jurisdiction over the matters alleged in this Petition pursuant to Code
6 of Civil Procedure §§1085 and 1094.5 and Public Resources Code §§21168 and 21168.5. The Court
7 has jurisdiction to issue declaratory relief pursuant to Code of Civil Procedure § 1060 and injunctive
8 relief pursuant to Code of Civil Procedure § 525 *et seq.*

9 15. Venue is proper pursuant to CCP §§ 393(b) (actions against public officers) and 395
10 (actions generally) because Respondent is an agency of the State of California. Venue is proper in
11 this Court because the causes of action alleged in this Petition and Complaint arose in the County of
12 Alameda, the Project will occur within the County of Alameda, and the environmental impacts of the
13 Project will be acutely felt within the County of Alameda.

14 16. This action was timely filed. Petitioner filed this Petition and Complaint prior to the
15 expiration of any applicable statute of limitations.

16 17. Petitioner performed all conditions precedent to filing this action by complying with
17 the requirements of PRC § 21167.5 by serving prior notice of the complaint in this action. A copy of
18 the written notice and proof of service is attached as Exhibit A to the Petition in this action.

19 18. Pursuant to PRC § 21167.6(b), Petitioner has elected to prepare the record of
20 proceedings in this matter, and is simultaneously filing their notice of intent to prepare said record of
21 proceedings with this Petition and Complaint. A true and correct copy of Petitioner's Notice of
22 Intent to Prepare Record is attached to this complaint as Exhibit B.

23 19. Petitioner will provide notice of this action to the Attorney General of the State of
24 California, by serving a copy of this Petition along with a notice of its filing, as required by PRC §
25 21167.7 and CCP § 388.

26 EXHAUSTION OF ADMINISTRATIVE REMEDIES

27 20. Local 3299 has actively participated in the administrative and environmental review
28 process prior to close of the public hearings on the Project and before the issuance of the Notices of

1 Determination. Local 3299 has fully exhausted administrative remedies to the extent required by law.
2 Pub. Res. Code §21177(a).

3 21. CEQA allows a petitioner who objected to a project to allege in a petition all
4 deficiencies asserted by others. *California Clean Energy Committee v. City of Woodland* (2014) 225
5 Cal.App.4th 173, 191. Local 3299, agencies, interested groups, and individuals commented on
6 the Project and raised each of the legal deficiencies asserted in this Petition and Complaint.

7 22. The Regents has taken final agency actions certifying the EIR and adopting related
8 Project approvals and findings. The Regents had a mandatory duty to comply with all applicable
9 laws, including CEQA, prior to undertaking the discretionary approvals at issue in this Petition and
10 Complaint. Local 3299 possesses no effective remedy to challenge the Project approvals at issue in
11 this action other than by means of this lawsuit.

12 PROCEDURAL ALLEGATIONS

13 23. The University released a Draft EIR for public review in March 2021. The Draft EIR
14 addressed the 2021 LRDP Update, and the Anchor House and People's Park housing projects.

15 24. Many parties provided written comments on the Draft EIR, including Local 3299,
16 other organizations, public agencies, and individual members of the public.

17 25. In July 2021, the University released the Final EIR for the Project. The Final EIR
18 included responses to comments on the Draft EIR and revisions to the Draft EIR, among other
19 things.

20 26. On July 22, 2021, the University held a hearing on the Project and certified the Final
21 EIR for the 2021 LRDP Update and the Housing Projects, approved the 2021 LRDP Update,
22 approved the Anchor House project, and made related findings.

23 FACTUAL ALLEGATIONS

24 The Project and Project Site

25 27. The Project includes three components: (1) the 2021 LRDP Update, (2) Housing
26 Project #1 (Anchor House), and (3) Housing Project #2 (People's Park).
27
28

1 28. The 2021 LRDP Update is an overall land use plan intended to guide future growth
2 and development on the UC Berkley Campus over the next 15 years. It has a buildout horizon of the
3 2036-37 school year and is an update to the University's existing Long Range Development Plan
4 adopted in 2005, which had a buildout horizon year of 2020. The 2021 LRDP Update contemplates
5 an on-campus population of 67,200 persons (an increase of 12,071 from 2020 levels), an additional
6 8,096,249 square feet of development, and an additional 1,240 parking spaces covering 1,081,080
7 square feet of space for parking lots and parking structures. Draft EIR at 3-25.

8 29. The UC Berkely Campus is predominately located within the cities of Berkley and
9 Oakland. Draft EIR at 3-6. The "study area" used by the University for the EIR is contiguous with the
10 2021 LRDP Update planning area and includes the majority of UC Berkeley-owned properties. Draft
11 EIR at 3-8. However, it does not include UC Berkeley-owned properties outside of EIR study area,
12 including the University Village in Albany, the Richmond Field Station in Richmond, or various
13 properties outside of the city of Berkeley. *Id.*

14 30. Housing Project #1, also known as the Helen Diller Anchor House or Anchor House,
15 is a specific development that is part of the 2021 LRDP and involves the demolition of the existing
16 on-site structures and the construction and operation of a new 16-story, 526,000 square foot mixed-
17 use building with a combination of residential, campus life, academic life, and other uses not operated
18 by UC Berkeley. Draft EIR at 3-34. It is located immediately west of the Campus Park in Downtown
19 Berkeley, on a site bounded by Berkeley Way on the north, Oxford Street on the east, University
20 Avenue on the south, and Walnut Street on the west. Draft EIR at 3-35. Anchor House would provide
21 housing for 770 students and 46 employees. Draft EIR at 3-34.

22 31. The Anchor House site is currently occupied by eight apartment units (equivalent to 16
23 beds), surface parking, UC Berkeley office space, UC Berkeley's shuttle maintenance garage, and
24 vacant commercial buildings. Draft EIR at 3-35. UC Berkeley's shuttle garage, referred to as Oxford
25 Garage, is on the northeastern corner of the site and was built in 1930. *Id.* The garage is also listed in
26 the California State Historic Resources Inventory and was designated a City of Berkeley historical
27 landmark in 1981. *Id.*

1 32. Housing Project #2, also known as People's Park, is also a specific development that is
2 part of the 2021 LRDP Update and involves the demolition of the existing on-site structures and park
3 amenities and the construction and operation of two new mixed-use buildings with a combination of
4 residential, campus life, academic life, and other uses not operated by UC Berkeley. Draft EIR at 3-
5 50. Housing Project #2 would include three components: (1) a 17-story, 356,000 square foot student
6 housing building providing beds for 1,187 students and 8 faculty or staff, (2) a 91,970 square foot
7 affordable and supportive housing building that would house 125 residents, and (3) 82,000 square
8 feet of open space. Draft EIR at 3-51.

9 33. Housing Project #2 would be built at the current site of People's Park at 2556 Haste
10 Street. People's Park is a 2.8-acre park with current on-site uses including gardens and lawn space, a
11 paved basketball court, picnic tables, a wooden stage, and a public restroom building. Draft EIR at 3-
12 53. People's Park is currently primarily occupied by people without housing, in multiple
13 encampments. *Id.* Historically, People's Park has been known for being the site of protests and
14 community action. It is listed in the California State Historic Resources Inventory and is a City of
15 Berkeley historic landmark. *Id.*

16
17 **Wildfire, Public Safety, and Evacuation Impacts**

18 34. More than half of the UC Berkeley campus is designated a Very High Fire Severity
19 Zone, including all of Hill Campus West, Hill Campus East, Clark Kerr Campus, and many of the
20 City Environs properties. Draft EIR at 5.18-1, 3-8. New development in Very High Fire Severity
21 Zones increases the risk of fire ignition, which in turn increases the risk of exposing students,
22 residents, employees, and visitors to wildfire. "[A]s population increases and development further
23 encroaches into wildland vegetation, there is an increased risk that a human-caused ignition will
24 coincide in place and time with hot, dry weather; flammable vegetation; and severe wind conditions,"
25 Syphard, A. K, Keely, J. E. (2020). Why Are So Many Structures Burning In California? Fremontia,
26 47(2), 28. The EIR fails to analyze and mitigate the increased risk of wildfire stemming from the
27 siting of additional development within Wildland Urban Interface Zones and Very High Fire Severity
28 Zones on campus.

1 35. In evaluating the hazards created by a project, CEQA Guidelines Appendix G requires
2 EIRs to analyze whether a Project will “[e]xpose people or structures, either directly or indirectly, to
3 a significant risk of loss, injury or death involving wildland fires.” CEQA Guidelines Appendix G
4 §IX(g). The EIR does not adequately address this impact. The EIR does not include an analysis of
5 how the Project and its associated traffic and population increase will impact the ability of UC
6 students, staff, and faculty, as well as nearby neighborhoods, to evacuate in the event of a wildfire.
7 Nothing in the EIR analyzes whether the existing roadways are sufficient to accommodate the
8 evacuation of the increased UC campus population and surrounding neighborhoods, including the
9 additional cars and traffic resulting from the Project’s increased parking and population. Moreover,
10 the EIR is silent on how the existing campus population plus an additional 12,000 people will be
11 safely evacuated in the event of a fire, including the tens of thousands who will access campus
12 without cars. Without this information, there is no evidence to support the EIR’s conclusion that the
13 Project will not impair implementation or physically interfere with an adopted emergency response
14 plan or emergency evacuation plan.
15

16 36. With its July 17, 2021 comments, Petitioner submitted to Respondent the expert
17 comment of Professor Thomas Cova of the University of Utah who teaches and studies
18 environmental hazards, environmental management, and evacuation hazards. After reviewing the
19 EIR, Professor Cova explained that the it “fails to account for the increased cars accommodated by
20 the 1,240 additional parking spaces added by the LRDP, and the impact those cars will have on
21 evacuation capacity and timing. In addition, the EIR does not analyze how the thousands of additional
22 students and staff who access campus without cars will safely evacuate in the event of a wildfire or
23 other emergency.” Cova at 1. “Without this information, it is impossible to determine if the Project
24 would substantially impair an adopted emergency response plan or emergency evacuation plan.” *Id.*
25

26 37. The Final EIR’s response to comments by Petitioner and others raising concerns about
27 the Project’s impacts on wildfire and safety were inadequate and conclusory. The EIR does not adopt
28 numerous additional mitigation measures suggested by the public, experts, and the City of Berkeley

1 to reduce wildfire and safety risks, and provides no explanation or evidence that such measures are
2 infeasible.

3 38. Mitigation Measure WF-3, meant to address some wildfire concerns, is uncertain,
4 unenforceable, and constitutes deferred mitigation. MM WF-3 provides: “[e]lectrical lines associated
5 with future electric infrastructure shall be undergrounded, where feasible. UC Berkeley shall verify
6 compliance with this measure as part of plan review prior to construction.” Draft EIR at 5.18-26. The
7 EIR provides no definition for what is meant by “feasible” in the context of this measure. As a result,
8 the MM WF-3 does not require the University to underground any wires, as long as at some point
9 after the CEQA process is complete, it finds any reason at all that doing so would be infeasible.
10 Moreover, there is no evidence that it is infeasible to underground all electrical lines associated with
11 future electric infrastructure. Since the EIR concludes the Project’s impact on wildfires is significant
12 and unavoidable, Respondent was required to adopt all feasible mitigation measures.

13 **Transportation**

14 39. The EIR’s discussion of transportation and traffic impacts is deficient. The EIR
15 concludes that the Project will have a less than significant transportation impact because the Project is
16 “generally consistent with the transportation-related goals and policies in the UC Sustainable
17 Practices Policy and the UC Berkeley Sustainability Plan.” Draft EIR at 5.15-47. In reaching this
18 conclusion, the EIR fails to analyze the impacts of the more than 12,000 additional people expected
19 to be on campus by the year 2036, together with the Project’s increased reliance on public
20 transportation. Moreover, the EIR not address how the 2021 LRDP Update’s increased reliance on
21 public transportation will impact public safety evacuation plans.

22 **Public Services**

23 40. The EIR fails to disclose or mitigate impacts to fire and emergency medical services.
24 The City of Berkeley noted in comments on the Draft EIR that “the Berkeley Fire Department
25 (“BFD”) provides the vast majority of fire and emergency medical protection for the campus.” Final
26 EIR at 5-115. The City of Berkeley explains that responding to calls for higher density and taller
27 apartment buildings— like the proposed Housing Project #1 and #2 - takes twice the staff and
28

1 additional fire engines because of the need to evacuate hundreds of people. Final EIR at 5-116. The
2 EIR acknowledges that “the BFD indicated that projected population growth and development
3 proposed by UC Berkeley over the buildout horizon of the proposed LRDP Update would require
4 significant additional resources and facilities in order for the BFD to adequately respond to calls for
5 service.” Draft EIR at 5.13-17. Additional needed equipment includes an aerial ladder truck, type 1
6 fire engine, ambulance, mobile air supply truck, and battalion chief to accommodate the increased
7 density and height of projects under the proposed LRDP Update. *Id.* The EIR also acknowledges that
8 “[t]he BFD indicated that a new facility would need to be close to the Campus Park to house these
9 additional resources, and the BFD’s Division of Training building would need to be expanded to meet
10 additional training demands of a larger department.” *Id.*

11
12 41. CEQA requires an EIR to evaluate and mitigate any significant environmental impacts
13 caused by the need for new or expanded facilities to provide public services required by proposed
14 projects. CEQA Guidelines, Appendix G § XV. However, the environmental impacts of the new and
15 expanded facilities required by the Project are never analyzed or mitigated in the EIR.

16 42. In response to the City of Berkeley’s comments, the Final EIR quotes the Draft EIR’s
17 statement that “if and when the City of Berkeley would decide to construct a new facility in order to
18 accommodate additional resources, UC Berkeley would negotiate its proportional share of funding for
19 the mitigation of any environmental impacts resulting from the construction of the facility.” Final EIR
20 at 5-115. This is not an adequate response to the City of Berkeley’s comments (*see Cleary v. County*
21 *of Stanislaus* (1981) 118 Cal.App.3d 348, 357), and fails to analyze the Project as a whole, including
22 it reasonably foreseeable indirect physical changes to the environment.

23 **Historic, Cultural, and Tribal Resources**

24 43. The EIR Study Area includes dozens of historic buildings by renowned architects. The
25 Project will result in the demolition of more than 40 buildings that have been or could be designated
26 as landmarks by the City of Berkeley and/or listed in the National Register of Historic Places.

27 44. The Berkeley Architectural Heritage Association (“BAHA”) commented that the EIR
28 does not contain a comprehensive survey detailing existing baseline condition for historic, tribal, or

1 cultural resources. BAHA also points out that the EIR's historic resource technical reports are based
2 on incomplete and incorrect information, impacted resources were omitted or misdescribed.

3 45. The EIR's discussion of impacts on these and other historic and cultural resources is
4 deficient. For instance, the EIR fails to evaluate the impacts of shadows on the First Church of Christ
5 Scientist, a historic landmark located directly across the street from the 17-story housing building
6 proposed for Housing Project #2. The Final EIR responds to comments on shadow impacts by
7 improperly claiming that they do not need to be analyzed under CEQA. *See Bowman v. City of*
8 *Berkeley* (2004) 122 Cal.App.4th 572, 586; *South of Market Community Action Network v. San*
9 *Francisco* (2019) 33 Cal.App.5th 321, 349-350 (EIR was adequate in addressing shadow impacts
10 because it described the impacts in detail before concluding that there would be no significant
11 impact.). The EIR's failure to include information about the Project's shading impacts renders the
12 EIR inadequate as an informational document.

13 46. The EIR fails to adequately mitigate the Project's impacts to historic resources. The
14 EIR concludes that the Project's impacts on historical resources will be significant and unavoidable
15 despite the availability of additional feasible mitigation measures and alternatives. Numerous experts,
16 organizations, and members of the public, including the City of Berkeley, the Berkeley Landmark
17 Preservation Committee, and the Berkeley Architectural Heritage Association suggested additional
18 feasible mitigation measures that would reduce the Project's impacts on historical resources. These
19 suggested mitigation measures and alternatives were rejected without an adequate explanation and
20 without evidence of infeasibility.

21 47. The mitigation measures there were adopted to reduce impacts on historic resources
22 violate CEQA. For example, Mitigation Measures CUL-1.4 requires that, prior to approval of final
23 design plans for Housing Project #2, UC Berkeley shall retain an architect meeting the National Park
24 Service Professional Qualifications Standards for historic architecture to review plans for the
25 proposed student housing and affordable and supportive housing buildings. The historic architect is to
26 provide input and refinements to the design team regarding fenestration patterns, entry design, and
27 the palette of exterior materials to improve compatibility with neighboring historical resources and to
28

1 enhance compliance with the Secretary of the Interior's Standards and the City of Berkeley Southside
2 Design Guidelines. Final EIR at 6-29. Mitigation Measure CUL-1.4 constitutes improperly deferred
3 mitigation because the EIR provides no reason why MM CUL-1.4 could not be conducted now, so
4 that the design recommendations could be reviewed and commented on by the public during the
5 CEQA review process. In addition, MM CUL-1.4 includes no performance standards and does not
6 provide the types of actions that could feasibly achieve those standards. Moreover, while the measure
7 requires UC to retain a historic architect to provide input on how to reduce the impact of Housing
8 Project 2 on surrounding historical resources, it does not actually require UC to adopt any of the
9 architect's recommendations.

10
11 48. The EIR's conclusion that the Project's impacts on tribal cultural resources ("TCR") is
12 less-than-significant after mitigation is not supported by the evidence or the law. The EIR claims that
13 Mitigation Measure CUL-2 and CBP CUL-1 would reduce Project impacts on TCRs below
14 significance. Draft EIR, 5.16-8. Mitigation Measure CUL-2 provides a process for consultation
15 between the consulting archeologist and the appropriate tribe to "recommend appropriate and feasible
16 avoidance, testing, preservation, or mitigation measures." It does not *require* avoidance if feasible.
17 Draft EIR at 5-4-43 and 5-4-44. This approach cannot be relied on as the basis for concluding that the
18 Project's impact on TCR would be less-than-significant. *See, Save the Agoura Cornell Knoll v. City*
19 *of Agoura Hills* (2020) 46 Cal.App.5th 665, 731-33 [mitigation measure requiring completion of data
20 recovery program if preservation becomes impossible does not mitigate impact to a less-than-
21 significant level].

22 **Greenhouse Gas**

23 49. The EIR's discussion of greenhouse gas effects is inadequate. For instance, there is no
24 evidence that it is feasible to reduce the Project's significant greenhouse gas emissions to a less-than-
25 significant level, including through the purchase of offset credits. In addition, the UC Berkeley 2020
26 Sustainability Goals require that the UC Berkely Campus be climate neutral for scope 1 and 2 sources
27 and at least 40 percent of the natural gas combusted onsite must be biogas by 2025. Draft EIR at 5.7-
28 19 to 20, 5.7-26. But the EIR contains no discussion specific to how the Project would advance or

1 hinder meeting those requirements or the many other climate-goals discussed in the EIR. Further, the
2 EIR claims the University will start purchasing offsets to comply with the UC Sustainability Policy in
3 2025 to meet net-zero requirements for Scope 1 and 2 emissions, but the EIR does not explain how it
4 will reduce its GHG impacts to a less than significant level prior to 2025.

5 **Biological Resources**

6 50. The EIR's discussion of the Project's impacts on biological resources is inadequate.
7 Petitioner's April 21, 2021 comment on the Draft EIR includes the comments of expert wildlife
8 ecologist Dr. Shawn Smallwood, Ph.D who reviewed the EIR and found that the it: (1) failed to
9 establish a proper baseline for wildlife; (2) failed to adequately analyze impacts due to habitat loss;
10 (3) improperly analyzed the Project's impact on wildlife movement; (4) failed to disclose, analyze,
11 and mitigate the Project's impacts to wildlife due to window/vehicle collisions and energy use; (5)
12 inadequately analyzed the Project's cumulative impacts; and (6) failed to incorporate all feasible
13 mitigation measures.
14

15 51. The Final EIR does not adequately respond to Dr. Smallwood's comments. For
16 instance, in response to Dr. Smallwood's comments that the Project will have a significant impact on
17 biological resources as a result of habitat loss, the Final EIR states that "preconstruction surveys
18 would be necessary during nesting season to confirm whether proposed development or vegetation
19 management activities would adversely affect nesting birds where suitable habitat is present." Final
20 EIR at 5-423. This response ignores the ongoing impact on species resulting from habitat loss.

21 **Housing and Population**

22 52. The UC Berkeley campus has the lowest percentage of beds for the student body of
23 any campus in the UC system, requiring many to seek housing in the cities surrounding campus, and
24 cities further away. Draft EIR at 3-2.

25 53. The EIR includes an additional 8,492 students, approximately 71% (6,032 students) of
26 whom will live off-campus in the City of Berkley. Draft EIR at 5.12-9. In addition, the EIR includes
27 an additional 3,579 faculty and staff, 29% (1,037) of whom are expected to live in Berkeley. *Id.* In
28 total, this amounts to an additional 7,069 people who will need to find housing in the City of Berkley.

1 The City of Berkeley's entire housing stock in 2020 included only 51,523 units. Draft EIR at 5.12-11.
2 To house an additional 7,069 people will require additional housing to be built in Berkeley, and the
3 EIR failed to analyze the impact of this necessity. As the Alameda County Superior Court recently
4 held, "[i]ncreases in campus population foreseeably lead to direct and indirect impacts on housing,
5 population, and displacement, and the failure to consider those impacts constitutes prejudicial abuse
6 of discretion." *Save Berkeley's Neighborhoods v. Regents of Univ. of Cal.*, Alameda Sup. Ct. at p. 16
7 (Case No. 19022887) ("*SBN v. Regents*") (attached hereto as Exhibit C).

8 54. The EIR defends the growth as minimal in relation to regional growth. Draft EIR at
9 5.12-15. A regional comparison does not account for, mitigate, and analyze alternatives to the
10 specific growth-inducing effects of the Project in the particular area in which it is located, including
11 relating to housing. *See SBN v. Regents* at 14 (Exhibit C).

12 55. In addition to requiring construction of new housing, increased demand for housing in
13 the neighborhoods surrounding campus will also cause displacement of longtime low- and middle-
14 income families because the more than 7,000 new employees and students will flood the surrounding
15 rental market, driving up prices and forcing current renters out.

16 56. The EIR assumes full buildout of the 2021 LRDP Update's development by 2036,
17 along with a significantly increased campus population, but the EIR and 2021 LRDP Update do not
18 link the amount of campus population growth with the development of new campus housing, and no
19 mitigation measure requires the same. As a result, the full campus-population increase could occur
20 without construction of any additional housing. If this does occur, the impacts on housing in
21 Berkeley, Oakland, and other nearby cities would be even greater. The EIR fails to analyze the
22 environmental impact of additional housing that will be needed in the City of Berkeley and
23 elsewhere to make up for such a shortcoming.

24 57. No EIR has been prepared that analyzes UC Berkeley's past campus population
25 increase above what was analyzed in the LRDP adopted in 2005. The University improperly
26 attempts to boot-strap these past population increases into the Final EIR, while also claiming that the
27 EIR does not need to analyze the impacts of anticipated future campus population growth. Both are
28

1 inconsistent with recent Court rulings in *Save Berkeley Neighborhoods v. The Regents et al* (Case
2 No. RG19022887) and *The City of Berkeley v. The Regents et al.* (Case No. RG19023058) (the
3 “Enrollment Cases Decision”), which made it clear that UCB must treat its planned population
4 growth as a “project” for CEQA purposes.

5 **Impacts to Human Health from Toxic Air Contaminants in Indoor Air.**

6 58. The EIR fails to adequately disclose, evaluate, and mitigate the Project’s significant
7 adverse impact with respect to impacts on human health as a result of formaldehyde emissions in
8 indoor air, and its conclusions are not supported by substantial evidence.

9 59. The EIR fails to disclose, evaluate, and mitigate the Project’s significant health risks to
10 future residents and workers at future buildings that are planned as part of the 2021 LRDP Update,
11 including Housing Projects #1 and #2, resulting from the emissions of formaldehyde into the indoor
12 air. Formaldehyde is a toxic air contaminant (“TAC”). TACs are pollutants with the potential to
13 cause significant adverse health effects. Many composite wood products typically used in building
14 construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time
15 period. The primary source of formaldehyde indoors is composite wood products manufactured with
16 urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These
17 materials are commonly used in building construction for flooring, cabinetry, baseboards, window
18 shades, interior doors, and window and door trims. The Bay Area Air Quality Management District
19 (“BAAQMD”) has established a significance threshold of health risks for carcinogenic TACs of 10 in
20 a million.
21

22 60. Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH, conducted a review
23 of the Project, the EIR, and relevant documents regarding the Project’s indoor air emissions. Mr.
24 Offermann concluded that future residents of the Project will be exposed to a cancer risk from
25 formaldehyde of approximately 120 per million, assuming all materials are compliant with the
26 California Air Resources Board’s formaldehyde airborne toxics control measure. This is more than 12
27 times the BAAQMD’s CEQA significance thresholds for airborne cancer risk of 10 per million.
28

1 61. The Final EIR also fails to adequately respond to comments on the Draft EIR raising
2 this issue. For instance, in response to comments, the EIR dismisses Mr. Offerman's comments as
3 speculative, but never provides additional detail on the types of building materials that would be used,
4 or investigates and discloses what the Project's formaldehyde emissions would actually be, and what
5 health impact that would have. The Final EIR also claims there is no need to analyze this impact
6 because the Project will follow Campus Design Standards, which build off of other applicable
7 regulations such requiring the use of materials meeting the CARB Phase 2 standard. Final EIR at 5-
8 443-44. This does not adequately respond to Mr. Offermann's comment because Mr. Offermann's
9 analysis is clear that the increased cancer risk of 120 per million is based on materials that already
10 meet CARB Phase 2 standards.

11 **Alternatives**

12 62. Project Alternative D proposes "Increased Faculty and Staff Housing." Draft EIR at 6-
13 59. "Under Alternative D, the Increased Faculty and Staff Housing Alternative, the proposed LRDP
14 Update would include an additional 1,000 beds for faculty and staff within the Hill Campus East and
15 the Clark Kerr Campus." *Id.* The only other detail provided about this alternative is as follows: "The
16 Hill Campus East would absorb an additional 600 beds and 400 additional beds would be included
17 under redevelopment within the Clark Kerr Campus. While no specific sites have been selected for
18 development on the Hill Campus East for this alternative, it is assumed that any new development
19 would be located in close proximity to existing development and infrastructure." *Id.* Without
20 explanation the EIR arbitrarily sited additional staff and faculty housing at an undisclosed location
21 within the area of campus with the most undeveloped natural habitat, the most risk of fire, and the
22 most difficult soil issues. Hill Campus East includes 760-acres of land, much of which is undeveloped
23 and hilly, and which is considered a Very High Fire Severity Zone. Noting only that an additional 600
24 beds would be located somewhere in the 760-acre Hill Campus East, the EIR's description of
25 Alternative D is not sufficient to allow the public and decision makers to meaningfully evaluate,
26 analyze, and compare Alternative D with the Project.
27
28

1 63. The EIR's conclusion that the impacts of Alternative D would be greater than the
2 Project's impacts on aesthetics, biological resources, geology and soils, utilities and service systems,
3 and wildfire are not supported by substantial evidence because the analysis is based on unstated and
4 unsupported assumptions about where the additional staff and faculty housing will be located in Hill
5 Campus East.

6 64. The EIR failed to evaluate a reasonable range of alternatives that would feasibly attain
7 most of the basic objectives of the Project but would avoid or substantially lessen any of the
8 significant effects of the Project. A reasonable range of alternatives should have included an analysis
9 of additional student, staff, and faculty housing that did not include development in open space found
10 in Hill Campus East, which is the most undeveloped, hilly, and fire-prone area of the entire campus.
11 Among other options, UC should have looked at locating the additional housing on the dozens of
12 parcels already deemed appropriate for redevelopment, increased the density of Anchor House by
13 building additional floors, or providing housing on UC Berkley-owned City Environs properties or on
14 other UC Berkeley-owned sites outside of the EIR study area. The EIR also improperly failed to
15 evaluate an alternative that limited campus population to a lower level. Compared to the Project and
16 Alternative D, any of these alternatives would have reduced environmental impacts and should have
17 been considered. Siting additional staff and faculty housing in Hill Campus East acted as a poison
18 pill, meant to defeat the environmental superiority of this alternative.

19
20 65. In addition, the alternatives analysis did not contain a reasonable range of alternatives
21 that would reduce the impacts of the Project, including Housing Projects #1 and #2, on historical
22 resources. The EIR notes that there are 39 sites identified as candidate sites for new buildout within
23 the LRDP area that are not designate as historical resources. Final EIR at 6-63. The EIR provides no
24 evidence that housing and other development could not be sited on these parcels, eliminating or
25 substantially reducing the Project's irreversible destruction of historic resources currently at the sites
26 of Housing Project #1 and 2. Moreover, the EIR did not analyze alternative locations, including off-
27 campus locations such as UC Berkeley City Environs properties, Richmond Bay Campus/Richmond
28 Field Station, the Mills College Campus, Albany Village, satellite UC Berkeley campuses, or other

1 off-campus sites, that would reduce or eliminate the impacts of Housing Project #1 and 2 on historic
2 resources.

3 66. Petitioner and other members of the public raised these issues in written and oral
4 comments on the Draft EIR, but the Final EIR did not adequately respond to such comments and
5 dismissed proposed alternatives as infeasible without supporting evidence or legal justification.

6 **Noise and Vibration**

7 67. The EIR's discussion of noise impacts is deficient. No acoustical report was prepared
8 by an expert in support of the EIR's analysis of potential noise impacts. To fill this informational gap,
9 Petitioner submitted comments of noise expert Deborah A. Jue, INCE-USA, of the firm Wilson Ihrig,
10 who reviewed the EIR and found that it lacked substantial evidence to support baseline noise levels.
11 Ms. Jue also suggested additional feasible mitigation measures to further reduce the Project's
12 significant and unabideable impacts. The Final EIR did not adopt these mitigation measures, despite
13 no evidence of infeasibility.

14 68. The EIR's discussion of construction-related vibration impacts is also deficient. The
15 EIR is not supported by a geotechnical report, and no information is provided about the subsurface
16 conditions of the sits of Housing Projects #1 and #2.

17 69. In addition, numerous parties and experts commented on the Project's impact on
18 historic resources near the Project as a result of pile driving during construction. The Final EIR
19 responds by noting an intention to use alternative construction methods that do not include
20 piledriving for Housing Projects #1 and #2, and for future LRDP projects "if feasible." This
21 constitutes improperly deferred and uncertain mitigation in violation of CEQA. Moreover, the Final
22 EIR does not disclose or analyze the vibratory impact of alternative construction methods on nearby
23 historic structures.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of CEQA-- Inadequate EIR**

3 **(Pub. Resources Code §21000, et seq. and CEQA Guidelines § 15000 et seq.)**

4 70. Petitioners hereby reallege and incorporate all of the above paragraphs as if fully set
5 forth herein.

6 71. CEQA was enacted by the legislature to ensure that the long-term protection of the
7 environment is a guiding criterion in public decisions. Pub. Res. Code, § 21001(d). CEQA requires
8 the lead agency for a project with the potential to cause significant environmental impacts to prepare
9 an EIR for the project that complies with the requirements of the statute, including, but not limited
10 to, the requirement to disclose and analyze the project's potentially significant environmental
11 impacts. Pub. Res. Code, §§21002.1(a), 21100(a), 21151(a); 14 CCR §§15064(a)(1), (f)(1), 15367.
12 The EIR must provide sufficient environmental analysis such that the decisionmakers can
13 intelligently and fully consider environmental consequences when acting on the proposed project.
14 Such analysis must include and rely upon thresholds of significance that are based on substantial
15 evidence in the record.

16 72. CEQA also mandates that the lead agency analyze and adopt feasible and enforceable
17 mitigation measures that would reduce or avoid each of a project's significant environmental impacts.
18 PRC § 21061; *see also* §21002.1. If any of the project's significant impacts cannot be mitigated to a
19 less than significant level, then CEQA bars the lead agency from approving a project if a feasible
20 alternative is available that would meet the project's objectives while avoiding or reducing its
21 significant environmental impacts.

22 73. Each of the lead agency's findings and conclusions, including those in the EIR, must
23 be supported by substantial evidence in the administrative record, and the agency must explain how
24 the evidence in the record supports the conclusions the agency has reached. *Topanga Assn. for a*
25 *Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

26 74. Respondent committed a prejudicial abuse of discretion and failed to proceed in a
27 manner required by law because the Project relies on an EIR that fails to meet the CEQA's
28 requirements for the disclosure, analysis, mitigation, reduction, and/or avoidance of significant

1 environmental impacts from the Project, including direct, indirect, and cumulative impacts relating to
2 wildfire, public safety, public services, historic, cultural, and tribal resources, transportation,
3 greenhouse gas emissions, biological resources, housing and population, human health, and noise and
4 vibrations. These deficiencies rendered the EIR inadequate as an environmental document and
5 precluded informed decision making and informed public participation.

6 **75. Wildfire, Public Safety, and Evacuation.** The EIR fails to adequately disclose,
7 analyze, and/or mitigate the Project's significant direct, indirect, and cumulative wildfire-related
8 impacts. The EIR's analysis of wildfire-related impacts is inadequate because, *inter alia*, the EIR:

- 9 a. fails to analyze and mitigate all the increased potential for wildfire ignitions resulting
10 from siting additional housing and development in Wildland Urban Interface Zones
11 and Very High Fire Hazard Severity Zones;
- 12 b. fails to analyze and mitigate whether the Project will expose people or structures to a
13 significant risk of loss, injury or death involving wildland fires;
- 14 c. fails to provide sufficient information to determine how the Project's traffic and
15 population increases will impact evacuation times and procedures and whether it will
16 interfere with existing emergency and evacuation plans;
- 17 d. fails to support its findings that the Project will not physically interfere with an
18 adopted emergency response plan or emergency evacuation plan with substantial
19 evidence;
- 20 e. fails to adopt all feasible mitigation measures to reduce the Project's significant and
21 unavoidable wildfire and safety impacts; and
- 22 f. adopts mitigation measures that do not comply with CEQA.

23 **76. Transportation.** The EIR fails to adequately disclose, analyze, and/or mitigate the
24 Project's significant direct, indirect, and cumulative impacts on public transportation.

25 **77. Public Services.** The EIR fails to adequately disclose, analyze, and/or mitigate the
26 Project's significant direct, indirect, and cumulative impacts on the environment from the need for
27 new or expanded public services. The EIR's analysis of public services impacts is inadequate
28 because, *inter alia*, the EIR:

- a. fails to disclose, analyze, and mitigate impacts stemming from additional facilities and equipment needed by fire and police services as a result of the Project;
- b. fails to analyze the impacts of the project as a whole, including in direct impacts; and
- c. fails to adequately respond to comments raising concerns about the impacts on the environment caused by the need for new or expanded facilities to provide public services.

78. **Cultural and Tribal Resources.** The EIR fails to adequately disclose, analyze, and/or mitigate the Project's significant direct, indirect, and cumulative impacts on cultural and tribal resources. The EIR's analysis of cultural and tribal resources impacts is inadequate because, *inter alia*, the EIR:

- a. fails to require all feasible mitigation measures and alternatives;
- b. fails to adequately respond to comments;
- c. adopts deferred mitigation that violates CEQA;
- a. fails to support its finding that the Project's impacts on tribal cultural resources will be less-than-significant with mitigation.

79. **Greenhouse Gases.** The EIR fails to adequately disclose, analyze, and/or mitigate the Project's direct, indirect, and cumulative greenhouse gas effects. The EIR's analysis of greenhouse gas impacts is inadequate because, *inter alia*, the EIR:

- a. fails to support its selection of thresholds of significance with substantial evidence in the record;
- b. relies on greenhouse gas mitigation measures that are vague, ineffective, deferred, and/or unenforceable;
- c. fails to incorporate all feasible mitigation and avoidance measures;
- d. impermissibly relies on off-site offsets to mitigate Project's greenhouse gas emissions because the EIR fails to provide substantial evidence that such offsets are available, real, permanent, quantifiable, verifiable, and enforceable reductions; and

- 1 e. fails to discuss how the Project would affect the ability to meet the Regents'
2 requirements for the UC Berkeley Campus.

3 80. **Biological Resources.** The EIR fails to adequately disclose, analyze, and/or mitigate
4 the Project's significant direct and cumulative impacts to biological resources. The EIR's analysis
5 of impacts on biological resources is inadequate because, *inter alia*, the EIR:

- 6 a. fails to establish a proper baseline for wildlife;
7 b. fails to adequately analyze impacts due to habitat loss;
8 c. analyzes the Project's impact on wildlife movement using an improper standard;
9 d. failing to disclose, analyze, and mitigate the Project's impacts to wildlife due to
10 window/vehicle collisions and energy use;
11 e. inadequately analyzes the Project's cumulative impacts; and
12 f. fails to incorporate all feasible mitigation measures.

13
14 81. **Population, Housing, and Growth Inducement.** The EIR fails to adequately
15 disclose, analyze, and/or mitigate the Project's significant direct and cumulative impacts on
16 population, housing, and growth inducement. The EIR's analysis of impacts on impacts on
17 population, housing, and growth inducement is inadequate because, *inter alia*, the EIR:

- 18 a. fails to consider the direct and indirect impacts of the Projects' increased campus
19 population on housing, population, and displacement;
20 b. fails to adequately discuss the need for construction of additional housing;
21 c. fails to adequately analyze the Project's cumulative impact on housing and population
22 growth;
23 d. fails to analyze the impacts of an increased student and staff population without
24 additional housing beyond Housing Projects #1 and 2; and
25 e. fails to analyze impacts of past and projected campus population growth.

26 82. **Health Hazards from TAC Emissions.** The EIR fails to adequately disclose, analyze,
27 and/or mitigate the Project's significant direct and cumulative impacts on human health from the
28

1 emissions of TACs in indoor air. The EIR's analysis of impacts on human health from TAC
2 emissions is inadequate because, *inter alia*, the EIR:

- 3 a. fails to disclose and mitigate the impact despite substantial evidence that it will be
4 significant;
- 5 b. fails to adopt feasible mitigation measure to reduce the significant impact; and
- 6 c. fails to adequately respond to comments on the Draft EIR providing substantial
7 evidence of a significant impact not analyzed and mitigated by the EIR.

8 83. **Baseline.** The EIR fails to adequately describe the existing physical environmental
9 conditions in the vicinity of the Project, including but not limited to environmental conditions relating
10 to the Project's impacts to biological resources, wildfire, noise, vibrations, historic resources, and
11 population.

12 84. **Alternatives.** The EIR fails to provide an adequate selection and discussion of
13 alternatives for consideration that foster informed decision-making and informed public
14 participation. The alternatives analysis in the EIR does not meet CEQA's requirement that an EIR
15 consider a reasonable range of alternatives that lessen the Project's significant environmental
16 impacts, does not focus on alternatives that either eliminate adverse impacts or reduce them to
17 insignificance even if they would to some degree impede the Project's objectives, failed to consider
18 a feasible alternative that would lessen significant impacts, unlawfully rejects alternatives without
19 adequately analyzing whether their impacts would be less significant than the Project's, and fails to
20 support with substantial evidence its conclusions regarding alternatives.

21 85. **Response to Comments.** The responses to comments in the Final EIR fail to meet
22 CEQA's requirements in that they neither adequately dispose of all the issues raised, nor provide
23 specific rationale for rejecting suggested Project changes, including the consideration or adoption of
24 feasible mitigation measures or alternatives. CEQA requires that a lead agency evaluate and respond
25 to all environmental comments on the Draft EIR that it receives during the public review period. The
26 responses must describe the disposition of the issues raised and must specifically explain reasons for
27 rejecting suggestions and for proceeding without incorporating the suggestions. The Final EIR's
28 responses to comments fail to satisfy the requirements of law. Failing to adequately respond to

1 comments rendered the Final EIR inadequate as an informational document.

2 86. Based upon each of the foregoing reasons, the EIR is legally defective under CEQA.
3 Respondents prejudicially abused their discretion in violation of CEQA in approving the Project. As
4 such, the Court should issue a writ of mandate directing Respondents to set aside the certification of
5 the EIR and approval of the Project.

6 **SECOND CAUSE OF ACTION**

7 **Violation of CEQA – Inadequate Findings and Statement of Overriding Considerations**
8 **(Pub. Res. Code § 21000, et seq. and CEQA Guidelines § 15000 et seq.)**

9 87. Petitioner hereby reallege and incorporates all of the above paragraphs as if fully set
10 forth herein.

11 88. Respondents' Findings of Fact and Statement of Overriding Considerations violate the
12 requirements of CEQA and the CEQA Guidelines. Respondents' findings fail to identify the changes
13 or alterations that are required to avoid or substantially lessen the project's significant environmental
14 effects, and do not provide adequate reasoning or disclose the analytic route from facts to
15 conclusions, as required by law. The purported benefits of the Project cited in the Statement of
16 Overriding Considerations do not outweigh the Project's substantial costs to public health and the
17 environment. Respondents' Findings and Statement of Overriding Considerations are not supported
18 by substantial evidence in the record.

19 89. When an EIR concludes that a project would result in significant environmental
20 effects, but where mitigation measures and alternatives identified in the EIR are deemed infeasible,
21 the CEQA findings must identify the specific economic, legal, social and technological and other
22 considerations that make infeasible the adoption of mitigation measures or alternatives. All CEQA
23 findings must be supported by substantial evidence in the record and must disclose the analytical
24 route by which approval of a project is justified. Here, the findings regarding the impacts, mitigation
25 measures, and alternatives relied upon by Respondent's approval of the Project are not supported by
26 substantial evidence in the record, and do not disclose the links between evidence and conclusions.

27 90. As a result of the foregoing defects, Respondent failed to proceed in a manner required
28 by law, and its decision to approve the Project and adopt Findings of Fact and a Statement of

1 Overriding Considerations was not supported by substantial evidence.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Petitioner respectfully requests the following relief and entry of judgment as
4 follows:

- 5 1. For a stay of Respondent's decisions approving the Project pending trial;
- 6 2. For a peremptory writ of mandate directing:
- 7 a. Respondent to vacate and set aside its certification of the Final EIR for the
- 8 Project and decisions approving the Project;
- 9 b. Respondent and Real Party in Interest to suspend all activity under the
- 10 certification of the EIR and approval of the Project that could result in any
- 11 change or alteration to the physical environment until Respondent has taken
- 12 all actions necessary to bring the certification and Project approvals into
- 13 compliance with CEQA; and
- 14 c. Respondent to prepare, circulate, and consider an EIR in compliance with
- 15 CEQA prior to any subsequent action to approve the Project.
- 16
- 17 3. For a declaration that Respondents' actions certifying the EIR and approving the
- 18 Project violated CEQA and the CEQA Guidelines, and declaring that the certification of the EIR and
- 19 approval of the Project is invalid.
- 20 4. For the costs of suit.
- 21 5. For an award of attorneys' fees pursuant to Code of Civil Procedure §1021.5 and any
- 22 other applicable provisions of law.
- 23 6. For any other legal and equitable relief as this Court deems just and proper.
- 24

25 Dated: August 20, 2021

LOZEAU|DRURY LLP

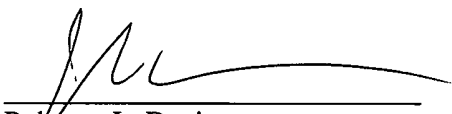
26 
27 Rebecca L. Davis
28 Attorneys for Petitioner

EXHIBIT A



T 510.836.4200
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1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
rebecca@lozeaudrury.com

August 18, 2021

By U.S. Mail & E-mail

Office of the Secretary and Chief of Staff to the Regents
1111 Franklin St., 12th floor
Oakland, CA 94607
Email: regentsoffice@ucop.edu

**Re: Notice of Intent to File Suit Under the California Environmental Quality Act
Regarding the Final EIR for UC Berkeley 2021 LRDP Update and Housing Projects
#1 and #2 (SCH No. 2020040078)**

To the Regents of the University of California:

Please take notice that, pursuant to Public Resources Code § 21167.5, the American Federation of State, County, and Municipal Employees, Local 3299 ("Petitioners") intend to file a Verified Petition for Peremptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition") under the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code §§ 21000, *et seq.*, against Respondent the Regents of the University of California challenging its July 22, 2021 decisions including its: (1) certification of the Final EIR for the UC Berkeley Long Range Development Plan and Housing Projects #1 and #2, (2) adoption of the UC Berkeley 2021 Long Range Development Plan, (3) approval of Housing Project #1 also known as Anchor House, and (4) adopting related findings (collectively, the "Project").

Among other issues, Petitioner will allege that Respondent failed to proceed in the manner required by law and without substantial evidence by certifying an EIR that fails to properly disclose, analyze, and mitigate the Project's potential significant individual and cumulative impacts, and failing to adequately analyze and consider Project alternatives. The petition being filed will seek the following relief:

1. For a stay pending trial of Respondent's decisions approving the Project.
2. For a peremptory writ of mandate ordering:
 - a. Respondent to vacate and set aside its certification of the EIR for the Project and decisions approving the Project;
 - b. Respondent and Real Party in Interest to suspend all activity under the certification of the EIR and approval of the Project that could result in any change or alternation to the physical environment until Respondent has taken all actions necessary to bring the certification and Project approvals into compliance with CEQA; and
 - c. Respondent to prepare, circulate, and consider an EIR in compliance with CEQA prior to any subsequent action to approve the Project.
3. For the costs of suit.

Document received by the CA Supreme Court.

Re: Notice of Intent to File Suit
Under the California Environmental Quality Act
August 18, 2021
Page 2 of 3

4. For an award of attorney fees pursuant to Code of Civil Procedure § 1021.5 and any other applicable provisions of law or equity.
5. For any other equitable or legal relief that the Court considers just and proper.

Petitioner urges Respondent to rescind the Notices of Determination and the approvals for the Project, to conduct the appropriate environmental review, and to prepare a revised EIR addressing the concerns raised by Petitioner in written comments, as required by law.

Sincerely,

A handwritten signature in black ink, appearing to be 'Rebecca L. Davis', with a long horizontal flourish extending to the right.

Rebecca L. Davis
Lozeau Drury LLP

Re: Notice of Intent to File Suit
Under the California Environmental Quality Act
August 18, 2021
Page 3 of 3

PROOF OF SERVICE

I, Toyer Gear, declare as follows:

I am a resident of the State of California, and employed in Oakland, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 1939 Harrison St., Suite 150, Oakland, CA 94612.

On August 18, 2021, I served a copy of the foregoing document entitled:

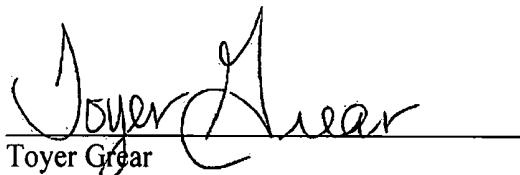
**Notice of Intent to File Suit Under the California Environmental Quality Act
Regarding the EIR for UC Berkeley 2021 LRDP Update and Housing Projects #1 and
#2 (SCH No. 2020040078)**

on the following party:

Office of the Secretary and Chief of Staff to the Regents
1111 Franklin St., 12th floor
Oakland, CA 94607
Email: regentsoffice@ucop.edu

<input checked="" type="checkbox"/>	BY MAIL: By placing the document listed above in a sealed envelope with postage thereon fully prepaid for First Class mail, in the United States mail at Oakland, California addressed as set forth above.
<input checked="" type="checkbox"/>	BY EMAIL: By sending the documents as an electronic mail attachment in PDF format to the e-mail address above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed August 18, 2021 at Pittsburg, California.


Toyer Gear

Document received by the CA Supreme Court.

EXHIBIT B

1 MICHAEL R. LOZEAU (Cal. Bar No. 142893)
2 REBECCA L. DAVIS (Cal. Bar No. 271662)
3 BRIAN B. FLYNN (Cal. Bar No. 314005)
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5 1939 Harrison St., Suite 150
6 Oakland, CA 94612
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8 Fax: (510) 836-4205
9 E-mail:rebecca@lozeaudrury.com
10 michael@lozeaudrury.com
11 brian@lozeaudrury.com

12 Attorneys for Petitioner and Plaintiff

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

12 AMERICAN FEDERATION OF STATE,
13 COUNTY, AND MUNICIPAL
14 EMPLOYEES LOCAL 3299,

15 Petitioner and Plaintiff,

16 vs.

17 THE REGENTS OF THE UNIVERSITY OF
18 CALIFORNIA,

19 Respondent and Defendant;

20 UNIVERSITY OF CALIFORNIA,
21 BERKELEY, and DOES 1-10,

22 Real Parties in Interest and Defendants.

Case No.


**PETITIONER'S NOTICE OF INTENT TO
PREPARE ADMINISTRATIVE RECORD**

[California Environmental Quality Act
("CEQA"), Pub. Res. Code §21000, *et seq.*;
C.C.P. §§1094.5, 1085]

1 Pursuant to Public Resources Code §21167.6(b)(2), Petitioner American Federation of
2 State, County, and Municipal Employees, Local 3299 ("Petitioner") hereby notifies all parties
3 that Petitioner elects to prepare the administrative record relating to the above-captioned action
4 challenging Respondent The Regents of the University of California's July 22, 2021 decisions to
5 approve the UC Berkeley 2021 Long Range Development Plan ("LRDP") and Housing Project
6 #1 (Anchor House), including certifying the EIR for the LRDP and Housing Projects #1 and #2
7 (People's Park), and adopting related findings. Respondent and Real Parties in Interest are
8 directed not to prepare the administrative record for this action and not to expend any resources to
9 prepare the administrative record.
10

11
12 Dated: August 20, 2021

LOZEAU, DRURY LLP

13
14
15 
16 Rebecca L. Davis
17 Attorneys for American Federation of State, County,
18 and Municipal Employees, Local 3299
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Document received by the CA Supreme Court.

EXHIBIT C

ENDORSED
FILED
ALAMEDA COUNTY

JUL 09 2021

CLERK OF THE SUPERIOR COURT
By JHALISA CASTANEDA
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

SAVE BERKELEY'S NEIGHBORHOODS, a
California nonprofit public benefit corporation,

Petitioner,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA; JANET NAPOLITANO, in
her official capacity as President of the
University of California; UNIVERSITY OF
CALIFORNIA BERKELEY; CAROL T.
CHRIST, in her official capacity as Chancellor
of the University of California, Berkeley; and
DOES 1 THROUGH 20,

Respondents.

CITY OF BERKELEY,

Petitioner,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA; JANET NAPOLITANO, in
her official capacity as President of the
University of California; UNIVERSITY OF
CALIFORNIA, BERKELEY; CAROL T.
CHRIST, in her official capacity as Chancellor
of the University of California, Berkeley; and
DOES 1 through 20,

Respondents.

Case No. RG19022887

Case No. RG19023058

ORDER GRANTING PETITIONS FOR
WRIT OF MANDATE

1 Petitioners City of Berkeley and Save Berkeley's Neighborhoods commenced two actions
2 seeking a writ of mandate from the Court directing respondent The Regents of the University of
3 California ("UC") to set aside a determination of May 16, 2019. (AR1.) UC approved a new
4 development project to create additional academic and residential space for UC Berkeley's
5 Goldman School of Public Policy ("GSPP") on Hearst Avenue (the "Upper Hearst
6 Development"). (AR1.) To document its considerations of the environmental impact of its
7 project under the California Environmental Quality Act ("CEQA"), UC certified a Supplemental
8 Environmental Impact Report, which tiered from its 2020 Long Range Development Plan
9 Environmental Impact Report ("2020 LRDP EIR") and made minor amendments to it. (AR1.)

10 For the following reasons, the court grants the writs of mandate. The parties vigorously
11 debate whether the project description was consistent or appropriately defined. UC Berkeley's
12 concession that both the project and its "baseline" are subject to judicial review makes much of
13 this debate besides the point. The court concludes that the environmental analysis was legally
14 insufficient in several respects, and that it cannot accordingly endorse the failure to consider a
15 reduced enrollment alternative.

16 **I. LEGAL STANDARDS**

17 The Legislature intended CEQA "'to be interpreted in such a manner as to afford the
18 fullest possible protection to the environment within the reasonable scope of the statutory
19 language.'" (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 511, quoting *Laurel Heights*
20 *Improvement Assn. v. The Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376, 390.) "'With
21 narrow exceptions, CEQA requires an EIR whenever a public agency proposes to approve or to
22 carry out a project that may have a significant effect on the environment.'" (*Ibid.*, citing same at
23 pp.390-391.) "'Because the EIR must be certified or rejected by public officials, it is a document
24 of accountability.'" (*Id.* at p.512, citing same at p.392.) The general public, "being duly
25 informed, can respond accordingly to action with which it disagrees." (*Ibid.*, citing same.)
26 When the Court finds a violation of CEQA, a writ must issue. (Pub. Res. Code § 21168.9(b).)

1 When the Court is asked to review the decision of a public agency for compliance with
2 CEQA, its review “extend[s] only to whether there was a prejudicial abuse of discretion.” (Pub.
3 Res. Code § 21168.5.) A public agency has abused its discretion if either (1) the agency “has not
4 proceeded in a manner required by law” or (2) the agency’s decision is “not supported by
5 substantial evidence.” (*Ibid.*) “Judicial review of these two types of error differs significantly:
6 While we determine de novo whether the agency has employed the correct procedures,
7 “scrupulously enforc[ing] all legislatively mandated CEQA requirements” [citation], we accord
8 greater deference to the agency’s substantive factual conclusions.” (*Sierra Club, supra*,
9 6 Cal.5th at p.512, quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of*
10 *Rancho Cordova* (2007) 40 Cal.4th 412, 435.) Reviewing factual findings, the Court “will
11 resolve reasonable doubts in favor of the administrative decision[] and will not set aside an
12 agency’s determination on the ground that the opposite conclusion would have been equally or
13 more reasonable.” (*Id.* at p.515.)

14 II. INCREASES IN STUDENT ENROLLMENT AND CAMPUS POPULATION

15 A. ENROLLMENT – “UPDATED BASELINE”

16 In the SEIR, UC Berkeley undertook to study the environmental impacts of the existing
17 higher-than-projected campus population as part of the description of an “updated baseline.”
18 The SEIR states that its study of past population increase is not as part of the “project” as that
19 term is used in CEQA. (*See* AR60, 101-103; AR847; *see* Guidelines § 15378 [defining “Project”
20 as “the whole of an action, which has a potential for resulting in either a direct physical change
21 in the environment, or a reasonably foreseeable indirect physical change in the environment” and
22 subject to direction, funding, or discretionary permission by a public agency].) According to the
23 SEIR, UC Berkeley studied the impacts of the increase in its population leading to its “updated
24 baseline”—even though that increase was not part of the project—because “in its response to
25 comments to the 2020 LRDP EIR, UC Berkeley made a commitment to the City of Berkeley
26

1 that, if enrollment increased beyond the projections set forth in the 2020 LRDP, it would
2 undertake additional review under CEQA.” (AR60.)

3 It is important to distinguish the SEIR’s “updated baseline” analysis from the normal use
4 of the term “baseline” under CEQA. Ordinarily, an environmental impact report studies the
5 impacts of a project on the environment. To determine and measure those impacts, the lead
6 agency must determine the environmental conditions as they exist at the time it files its notice of
7 preparation for the project. (Cal. Code Regs., tit. 14, div. 6, ch.3, [“Guidelines”] § 15125(a).)
8 Under Guidelines section 15125, “[a]n EIR must include a description of the physical
9 environmental conditions in the vicinity of the project.” (Guidelines § 15125(a).) “This
10 environmental setting will normally constitute the baseline physical conditions by which a lead
11 agency determines whether an impact is significant.” (*Ibid.*) “The purpose of this requirement is
12 to give the public and decision makers the most accurate and understandable picture practically
13 possible of the project’s likely near-term and long-term impacts.” (*Ibid.*)

14 The “updated baseline” discussion in the SEIR serves to serve two purposes. First, the
15 SEIR describes the current campus population as the baseline for its environmental impact
16 analyses of the Upper Hearst Development, including the impact of further population increases.
17 Second, the SEIR includes an analysis for purely informational purposes to “update” the 2020
18 LRDP EIR’s projected population-related impacts analyses to analyze the impacts of the increase
19 in campus population above the level studied in the 2020 LRDP EIR (the “Excess Population”).
20 The SEIR discusses the potential impacts of the Excess Population and finds that it has had no
21 significant environmental impacts. (See AR101-103.) The SEIR does not consider alternatives
22 to the enrollment levels that led to Excess Population and does not adopt mitigation measures
23 beyond those already adopted in the 2020 LRDP EIR.

24 The unusual structure of the SEIR’s “update” analysis stems at least partly from an issue
25 of legal interpretation. When it was certified in 2005, the 2020 LRDP EIR had projected that
26 student enrollment at UC Berkeley would stabilize at around 33,450 students. (AR2134

1 ["[O]nce our current target is reached, at an estimated two-semester average of 33,450 students,
2 enrollment at UC Berkeley should stabilize."]; *see also* AR101.) But UC Berkeley's headcount
3 did not stabilize. It continued to increase and quickly exceeded those projections, with student
4 enrollment in the 2017-2018 school year reaching 40,955, "exceed[ing] the 2020 LRDP
5 projection by approximately 7,500 students." (AR101.) The record in this action does not
6 include any evidence that UC Berkeley studied the potential effects of the Excess Population
7 before its decision to enroll the additional students who make up the bulk of the increase to its
8 campus population since the 2020 LRDP EIR.

9 Several community members and organizations, including SBN and the City of Berkeley,
10 responded to UC Berkeley's Draft Supplemental Environmental Impact Report ("DSEIR") for
11 the Upper Hearst Development by requesting that UC Berkeley separate its "updated baseline"
12 analysis from the analysis of the Upper Hearst Development into a separate EIR. (AR847-848.)
13 Many commenters found the DSEIR confusing and unusual because it combined a future land
14 development project with a seemingly unrelated increase in student population that has already
15 happened. UC Berkeley responded to these comments in its Final Supplemental Environmental
16 Impact Report ("FSEIR"), arguing that an increase in enrollment or population categorically
17 cannot constitute a "project" under CEQA. (AR847, citing Pub. Res. Code § 21080.09.) The
18 FSEIR reasons, it is not possible to produce a meaningful EIR for the population increase
19 because it would not be tethered to an "approval" of a "project." (AR847-848.) The FSEIR also
20 notes that the GSPP project requires a minor amendment to the 2020 LRDP, and that the EIR
21 analysis for that land-use plan would therefore need to be brought up to date. (*Ibid.*) The FSEIR
22 concluded based on those premises that the Excess Population portion of its updated baseline
23 analysis must be included in the SEIR for the Upper Hearst Development because it could go
24 nowhere else.

25 That conclusion stood on a false premise. UC Berkeley was under the misapprehension
26 that increases in student enrollment only needed to be considered in the context of the long-range

1 development plan process, and then only to the extent such projections would “assist in
2 determining the amount of physical development required.” (See AR847-878.) In 2018, before
3 the DSEIR for the Upper Hearst Development was published, Petitioner Save Berkeley’s
4 Neighborhoods sued UC for failing to study the impacts of these increases in enrollment,
5 alleging that the enrollment increases constituted an unstudied project in violation of CEQA.
6 (See *Save Berkeley’s Neighborhoods v. The Regents of the Univ. of Cal.* (2020) 51 Cal.App.5th
7 226, 233.) In June 2020, after the DSEIR and FSEIR were published, the Court of Appeal held
8 that UC Berkeley’s interpretation of CEQA was incorrect. “CEQA requires public universities
9 to mitigate the environmental impacts of their growth and development.” (*Id.* at p.231.) “In this
10 context, growth includes student enrollment increases, which the Legislature has acknowledged
11 ‘may negatively affect the surrounding environment.’” (*Ibid.*) “[W]hen a public university
12 prepares an EIR for a development plan, [Public Resources Code] section 21080.09 requires
13 universities to expand the analysis to include a related feature of campus growth, future
14 enrollment projections, which is entirely consistent with the traditional, broad definition of a
15 CEQA project.” (*Id.* at p.239.) “It does not say that subsequent changes to enrollment plans—
16 with new or increased environmental effects that have not been analyzed and addressed—are
17 exempt from CEQA.” (*Ibid.*)

18 **B. ENROLLMENT – HOW TO REVIEW THE “UPDATED BASELINE”**

19 The “updated baseline” is a novel concept under CEQA, and it was included because UC
20 Berkeley misunderstood its legal obligations to study the impacts of student enrollment. Yet the
21 inclusion of an erroneous legal analysis in the SEIR does not necessarily require the EIR
22 certification be set aside. An EIR serves to structure the public consideration of environmental
23 impacts. Courts review an EIR for prejudicial abuse of agency discretion. (*Sierra Club, supra*, 6
24 Cal.5th at pp.511-512.) But a false legal analysis, like noncompliance with CEQA, is grounds to
25 grant a writ setting aside the agency approval only if the noncompliance resulted in “a
26 subversion of the purposes of CEQA by omitting information from the environmental review

1 process.” (*See Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 959.) In other words,
2 so long as the EIR still correctly identifies, analyzes, discusses alternatives, and proposes
3 mitigation for substantial environmental impacts, it fulfills its public purpose as an informational
4 document, notwithstanding the inclusion of a mistaken legal analysis, and its certification is not
5 an abuse of discretion for that reason. (*See* Pub. Res. Code § 21168.5 [standard of review is
6 prejudicial abuse of discretion]; Guidelines § 15151 [“The courts have looked not for perfection
7 but for adequacy, completeness, and a good faith effort at full disclosure.”].)

8 The next step would normally be to determine whether UC Berkeley’s updated baseline
9 analysis is part of the project being studied. An EIR must study and mitigate the impacts of a
10 “project” and consider reasonable alternatives to that “project.” (*See* Pub. Res. Code § 21002.1
11 [“The purpose of an environmental impact report is to identify the significant effects on the
12 environment of a project, to identify alternatives to the project, and to indicate the manner in
13 which those significant effects can be mitigated or avoided.”]; Guidelines § 15126.2(a) [“An EIR
14 shall identify and focus on the significant effects of the proposed project on the environment.”];
15 *see also* Guidelines § 15358 [defining “effects” and “impacts” as including only those direct and
16 indirect environmental impacts “caused by the project”].) In their briefs, the parties argued about
17 whether UC Berkeley was estopped from denying that the population increase was part of the
18 “project.” At the hearing on the petition, however, the parties stipulated that the SEIR’s analysis
19 of the impacts of the increase in enrollment was subject to judicial review in this proceeding
20 without resolving the issue of whether the increases to student enrollment that led to the Excess
21 Population were a part of the project studied in the SEIR. Given this stipulation, the Court does
22 not need to determine whether that past increase was part of the project under study here.

23 But what standard does the Court review the SEIR’s analysis of the past increases in
24 student enrollment? CEQA provides only one standard for review for an EIR—the Court will
25 grant the writ if it finds that an agency “has not proceeded in a manner required by law” or its
26 conclusions are “not supported by substantial evidence.” (*See* Pub. Res. Code § 21168.5.) The

1 Court does not decide whether the “updated baseline” analysis or the decision to increase
2 enrollment are a part of the project. But because CEQA provides only one standard of review,
3 this Order reviews the factual determinations and procedural conformity under the same
4 standards as if they were a part of a project. The parties’ arguments in the briefs regarding
5 estoppel, waiver, and admission are moot given the parties’ stipulation at hearing.

6 **C. ENROLLMENT – DESCRIPTION OF THE UPDATED BASELINE**

7 Both SBN and the City object to the SEIR on the grounds that it offers an inadequate,
8 shifting description of the project under study as sometimes including the population increase,
9 sometime not. “An accurate, stable, and finite project description is the [s]ine qua non of an
10 informative and legally sufficient EIR.” (*See County of Inyo v. City of Los Angeles* (1977)
11 71 Cal.App.3d 185, 193, 199.) An EIR is “fundamentally inadequate and misleading” if it offers
12 “conflicting signals to decision-makers and the public about the nature and scope of the activity
13 being proposed.” (*San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th
14 645, 655-656.)

15 The public environmental review process begins with the issuance of a Notice of
16 Preparation (“NOP”). (Pub. Res. Code § 21092.) A NOP must provide “sufficient information
17 describing the project and the potential environmental effects to enable the responsible agencies
18 to make a meaningful response.” (Guidelines § 15082(a)(1).) In this case, UC Berkeley’s NOP
19 describes the “project” as “a public-private partnership that would provide additional academic
20 space for GSPP’s undergraduate, graduate, and Global Executive Education programs, and
21 housing geared toward campus affiliates, principally faculty, graduate and post-doctoral
22 students” including “two separate buildings – an academic building and a residential building
23” (AR51, 53.) It also notes that the project “would involve minor text amendments to the
24 2020 LRDP” to “address the fact that . . . the proposed project conflicts with the existing
25 applicable land use plan[] and is not consistent with the 2020 LRDP housing element.” (AR52.)
26 The NOP announces that a supplemental EIR, rather than some other kind of informational

1 document, would be prepared because of “changes to the [2020 LRDP] land use plan” and “an
2 increase in current and foreseeable campus population levels above those analyzed in the 2020
3 LRDP EIR, based on a general increase in student enrollment and employee levels and growing
4 the GSPP program(s).” (AR52.) The NOP also notes that growing enrollment is part of a
5 continuing trend, as least in the foreseeable future: “UC Berkeley may continue to expand
6 enrollment”, which “depends on various factors including . . . legislative mandates, University
7 and State of California policies, available resources, and demographic trends” with an estimated
8 growth of “about 1.5 percent annually, on an average, in the near-term.” (AR51.) UC Berkeley
9 eventually circulated a Draft SEIR, which described the project as both (1) “the Upper Hearst
10 Development for GSPP” that “would have residential and academic components,” and (2) a
11 “Minor LRDP Amendment to accommodate the proposed land uses on the Project site.”
12 (AR76.) The evaluation of existing population levels above the levels previously studied were
13 described in the DSEIR not as part of the project but as part of an updated baseline for campus
14 population. (*See, e.g.*, AR60, 64, 848.)

15 The “updated baseline” analysis does not fit well within a traditional CEQA framework.
16 As discussed above, the SEIR itself consistently describes the project under study: the “Upper
17 Hearst Development” involving residential and academic buildings and a minor amendment to
18 the 2020 LRDP’s land use plan to allow for that construction. (*See, e.g.*, AR59-60, 69-98, etc.)
19 In its discussion of student enrollment levels, the SEIR distinguishes the impacts of new student
20 enrollment at the Upper Hearst Development from the impacts of the prior and projected
21 enrollment growth not attributable to the GSPP project. Its apparent goal in doing so is to
22 provide an environmental analysis for that previously unstudied population increase sufficient to
23 inform the public without having to study the increase as an actual project.

24 Petitioners argue that the SEIR’s use of an “updated baseline” to sometimes discuss and
25 sometimes ignore the Excess Population is analogous to the misleading project descriptions in
26 *County of Inyo* and *City of Santee*. (*See County of Inyo, supra*, 71 Cal.App.3d 185; *City of*

1 *Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438.) But it does not present the same
2 problems as an informational document as the EIRs in those cases. In *County of Inyo*, the City of
3 Los Angeles abused its discretion by certifying an EIR that discussed an increase in ground
4 water pumping from city-owned land in the Owens Valley for in-valley use while failing to
5 discuss and analyze its vaguely defined “recommended project,” a plan to divert surface and
6 groundwater for export to the City of Los Angeles. Los Angeles defined its “project” narrowly
7 while still purporting to disclose and discuss environmental impacts of increased water exports to
8 the City as “not part of the project” because those flows were to be directed through an aqueduct
9 that had been approved before CEQA was enacted—

10 At one point of the Final EIR the contradiction becomes explicit: ‘In the
11 process of preparing this environmental impact report, other aspects of
12 Aqueduct System operation have been reevaluated. This includes a
13 reappraisal of the rate of export through the Los Angeles Aqueducts. Thus,
14 the project description presented below includes references to the rate of
15 export, even though the rate of export was not part of the project . . .’
16 (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 196.)

17 Here, UC Berkeley narrowly described its project as the Upper Hearst Development, but also
18 purports to discuss the environmental impacts of the Excess Population as “not part of the
19 project” because all previous unstudied increases in student enrollment were supposedly exempt
20 from CEQA under UC’s misreading of Section 21080.09. Upper Hearst Development includes a
21 small increase in projected student enrollment at the GSPP, but that increase is one part of a
22 continuing trend of increasing student enrollment with potential cumulative effects. But that is
23 not the end of the analysis. Unlike the EIR in *County of Inyo*, UC Berkeley’s SEIR discusses,
24 describes, and considers the impacts of the larger trend in student enrollment in the SEIR.

25 In *City of Santee*, the Court analyzed a project by the County of San Diego to build a
26 “temporary” jail facility to ease overcrowding in its jail system and analyzed the impacts over
seven years. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438.) The Court
emphasized that the County had inappropriately “chopp[ed] a large project into many little ones”
because “[n]ot only does a reading of the record support a conclusion that some future action on

1 the temporary project was contemplated, it also reflects the EIR here could be considered one
2 small part of the larger project to ease jail crowding in the entire county.” (*Id.* at p.1454.) “Thus
3 it is reasonably foreseeable that the project will continue for a longer term than seven years, and
4 it is likewise reasonably foreseeable that the temporary male detention facility will be moved to
5 East Mesa either before the end of seven years or at that time.” (*Ibid.*) “These future uses
6 should have been included in the EIR and their cumulative effects discussed.” (*Ibid.*) The SEIR
7 in this case does consider increase in student enrollment on its own, but it does divorce that
8 analysis from its context in its discussion of the “updated baseline.”

9 In short, the SEIR attempts to analyze an increase in student enrollment without
10 admitting that increasing student enrollment is a project subject to review. The SEIR describes
11 the Upper Hearst Development as the relevant project. That project description does not shift
12 from one part of the SEIR to another. The SEIR situates that project within its larger context of
13 increasing student enrollment and it discusses cumulative effects. The SEIR’s definition is clear
14 enough that reasonable members of the public would not be misled about the scope of the project
15 under review, and it is not so “curtailed, enigmatic or unstable” that it “draws a red herring
16 across the path of public input.” (*County of Inyo, supra*, 71 Cal.App.3d at p.198.)

17 **D. ENROLLMENT –IMPACTS FROM GROWING CAMPUS POPULATION**

18 *1. Induced Housing Demand and Population Growth*

19 The CEQA Guidelines mandate that a lead agency should consider impacts to population
20 and housing when analyzing a project. (Guidelines § 15126.2(a), (e) [EIR must discuss “changes
21 induced in population distribution” “population concentration” and must “[d]iscuss the ways in
22 which the proposed project could foster economic of population growth, or the construction of
23 additional housing, either directly or indirectly, in the surrounding environment.”].) The
24 Guidelines’ Environmental Checklist Form asks the lead agency to determine whether the project
25 (a) would “[i]nduce substantial unplanned growth in an area, either directly (for example, by
26 proposing new homes and businesses) or indirectly (for example, through extensions of roads or

1 other infrastructure)” or (b) would “[d]isplace substantial numbers of existing people or housing,
2 necessitating the construction of replacement housing elsewhere.” (Guidelines, appx. G, § XIV,
3 subds. (a), (b).)

4 UC Berkeley’s DSEIR identified population and housing as an area in which further
5 analysis was required. (AR206.) It projected that student enrollment at UC Berkeley in the
6 2022-2023 academic year would exceed the projections in the 2020 LRDP EIR by more than a
7 third, but employees (and members of their households) were under projections. (AR207.) The
8 DSEIR attributes this increase to an increase in California’s college-age population and the
9 state’s Master Plan for Higher Education. (AR207.) The DSEIR “assume[s] that most of the
10 additional campus population would live in Berkeley or nearby parts of the Bay Area. (AR207.)
11 It compares the net population increase a projected increase to population for the entire
12 metropolitan Bay Area and concludes that its increased campus population would not
13 substantially affect the region as a whole. (AR207.) The DSEIR also noted that UC Berkeley
14 had created only 1,119 of the 2,600 new student beds authorized or anticipated in the 2020
15 LRDP EIR, and that UC Berkeley therefore had excess capacity to accommodate additional
16 student housing to offset any impacts. (AR208.) The DSEIR did not analyze effects on the
17 housing market, reasoning that such impacts were “not in themselves environmental impacts.”
18 (AR208.) It concluded that the increase in population “would generally be accommodated
19 without significant adverse impacts” and would not result in new impacts beyond those studied
20 by the 2020 LRDP EIR. (AR208.)

21 The City of Berkeley submitted comments disputing this analysis. The City argued that
22 the DSEIR’s comparison to the entire Bay Area was inappropriate because “new students,
23 faculty, and staff would be drawn to living in Berkeley due to the city’s proximity to campus and
24 the campus’ location in the heart of the City” but that the net increase of roughly 11,000 students
25 is approximately nine percent of the City’s population. (AR1186.) The City also referenced a
26 2017 survey conducted by UC Berkeley’s chancellor’s office showing that demand for campus

1 housing at UC Berkeley outpaces supply and that UC Berkeley has the lowest percentage of beds
2 to its student body of any UC campus in the state. (AR1185.) The same report found that ten
3 percent of students had experienced homelessness while attending UC Berkeley, including 20
4 percent of doctoral students. (AR1185.) The City asserted that this increase in population
5 without an increase in on-campus housing had led to “increased pressure for development in the
6 City” as evidenced by a “marked increase in development applications over prior years
7 particularly for the development of multi-unit housing developments typically marketed to
8 students.” (AR1186.) These new buildings, the City argued—when combined with UC
9 Berkeley’s practice of master-leasing off-campus apartments for student housing—reduce the
10 housing available for non-student residents and displace existing residents, particularly in
11 historically lower-income neighborhoods in South Berkeley and West Berkeley. (AR1186.) The
12 City also argues the imbalance between rapidly increased student enrollment with little
13 additional student housing development exacerbated student and nonstudent homelessness and
14 caused additional significant environmental impacts, including physical impacts to parks, streets,
15 and public places and increased demand for public safety and public health services due to the
16 unsafe living conditions in homeless encampments. (AR1187.) The City faulted the DSEIR for
17 not considering these indirect impacts from development, displacement, and homelessness.

18 As part of the Southside Neighborhood Consortium (“SNC”), SBN also submitted
19 comments on the topic of housing and population. (See AR1656 [Southside Neighborhood
20 Consortium letter signed by Philip Bokovoy on behalf of SBN].) Like the City, SNC objected
21 that population impacts were compared to population growth in entire Bay Area, not just
22 Berkeley. (AR1654.) It argued that the increased student population causes “pressure on the
23 local housing market with higher rents and more displacement” and increased “gentrification.”
24 (AR1655.) SNC also argued that the increased student population will increase demands for
25 City services—including police protection, fire and emergency medical services, parks and open
26 space—more late-night noise and traffic and more incidences of improper refuse disposal and

1 "moving day trash." (AR1655.) Finally, SNC also argued that the DSEIR's conclusion that the
2 fact that the City "already accommodates" a large number of student residents "is the equivalent
3 of saying: 'students over the baseline are already here so there is no impact.'" (AR1656.)

4 UC Berkeley responded to these comments in the FSEIR, which reports that
5 approximately 65% of UC Berkeley students live on campus or within a mile of campus.
6 (AR845.) This statistic does not support the university's comparison of the increase in campus
7 population to population growth in the greater Bay Area rather than the local area in which the
8 majority of its students reside. The FSEIR also finds that the total increase of 11,285 students by
9 the end of the 2022-2023 academic year (that is, both the Excess Population and the projected
10 increase from the Upper Hearst Development) would exceed the projected growth in UC
11 Berkeley-provided housing. (AR846.) It concludes that the University's 2020 LRDP planned
12 for a substantial increase in student housing that has not yet been built: "After construction of up
13 to 150 housing units in the proposed Upper Hearst Development, substantial capacity for
14 additional student housing would remain under the 2020 LRDP," and Development of additional,
15 affordable student housing "is consistent with the 2020 LRDP's development plans." (AR855.)
16 The FSEIR does not analyze whether exceeding the 2020 LRDP student enrollment projections
17 had indirect environmental impacts that were exacerbated leaving significant amounts of planned
18 student housing undeveloped.

19 The FSEIR's responded in part to the City's comments by noting that concerns about
20 increased campus population are about the "updated baseline," not the proposed Upper Hearst
21 Development. (See AR1185 [City's concern regarding impacts of "substantial increase in
22 campus population"]; AR882 [FSEIR's response].) The FSEIR concluded that no response was
23 required because the "updated baseline" was not the project under consideration: "[T]he student
24 population has now increased beyond 2020 LRDP projections with little or no analysis of the
25 potential environmental impacts of this increase in students over the number analyzed in the
26 2020 LRDP EIR." (AR882.) "CEQA [only] requires that UC Berkeley compare the potential

1 impacts of the housing project, such as the Upper Hearst Development, with existing
2 environmental conditions at the time CEQA review occurs, including current campus
3 population.” (AR882.) “Review of population increases are typically done as part of an overall
4 LRDP and its EIR.” (AR882.) Here, the SEIR dismisses the displacement and indirect
5 population impacts of the “update” portion of the updated baseline as outside the scope of its
6 study. The Court cannot meaningfully review the SEIR’s analysis of population impacts when
7 the SEIR declines to reach those conclusions itself in the first place. If the “update” were a
8 project, UC Berkeley’s refusal to consider potentially significant environmental impacts would
9 be a prejudicial abuse of discretion, and the Court finds it to be so here. This abuse of discretion
10 is exacerbated because the analysis does not clearly address the impact of the future student
11 enrollment increase attributed to the “project.”

12 The FSEIR responds to the City and SNC’s concerns about student and induced
13 nonstudent homelessness by asserting that “CEQA was enacted to protect the environment and
14 speculation about increased housing insecurity is beyond its scope.” (AR883.) “The potential
15 displacement of existing tenants in Berkeley also could result in an incremental increase in the
16 population of homeless people living in Berkeley, although the social impacts of displacement
17 are beyond the scope of environmental review under CEQA.” (AR856.) In the FSEIR, UC
18 Berkeley also argues that it need not consider the impacts of induced demand for non-University
19 housing because another agency will consider the environmental impacts of individual
20 development projects induced by economic forces. “Greater housing demand would increase the
21 incentive to construct additional private housing that caters to UC Berkeley students.” (AR856.)
22 “If future projects are proposed that would require the displacement of substantial numbers of
23 people or existing housing, necessitating the construction of replacement housing elsewhere,
24 their environmental impacts would be evaluated as required by CEQA on a project-specific
25 basis.” (AR856, citing AR2535 [2020 LRDP Vol. 1 at p.4.10-10].) This analysis fails to
26 consider whether its past increase in student enrollment caused population displacement.

1 Increases in campus population foreseeably lead to direct and indirect impacts on housing,
2 population, and displacement, and the failure to consider those impacts constitutes a prejudicial
3 abuse of discretion.

4 The FSEIR concludes that no new displacement impacts would result from the
5 construction of new University housing. "The proposed increase in headcount also may
6 necessitate the construction of new UC Berkeley-provided housing; however, such construction
7 would not require substantial displacements because the 2020 LRDP's land use strategy
8 prioritizes the siting of new housing on UC Berkeley's current property and, where necessary,
9 acquiring other sites where the displacement of existing tenants can be minimized." (AR856.)
10 This portion of the analysis also fails to consider indirect displacement impacts.

11 2. *Demand for Public Services by Excess Population*

12 The City argues that UC Berkeley erred in considering the population impacts by
13 concluding, without substantial evidence, that the increased population would not substantially
14 increase the demand for public services. The Guidelines require a lead agency to consider "other
15 aspects of the resource base such as . . . public services." (Guidelines § 15126.2(a).) The
16 Environmental Checklist Form asks the lead agency to determine whether the project would
17 "result in substantial adverse physical impacts associated with the provision of new or physically
18 altered government facilities, the construction of which would cause significant environmental
19 impacts, in order to maintain acceptable service ratios, response times or other performance
20 objectives" for various public services. (Guidelines, appx. G, § XV.) In response to the Draft
21 SEIR, the City of Berkeley submitted comments and evidence arguing that the increase in
22 student enrollment had created a significant increase in police services, fire and emergency
23 medical services, and public health services. (AR1187-1193.)

24 The City offered UC Berkeley a report by Economic and Planning Systems, Inc. (the
25 "EPS Report") as part of its public comments on the project. (AR1221-1309.) The EPS Report
26 broadly analyzes the fiscal impact on the City of being home to UC Berkeley. The Report states

1 that calls for police service from UC Berkeley and its immediate surroundings increased from 14
2 percent to 19 percent of the citywide total from 2003 to 2018. (AR1223.) The EPS Report also
3 states that, although UC Berkeley has its own code enforcement and fire inspection personnel, it
4 does not maintain its own fire and emergency medical response teams and, as a result, the City's
5 fire department provides the vast majority of fire and emergency medical response protection for
6 UC Berkeley's campus. (AR1223.) It also states that the City's fire department must undertake
7 special training because of high-density buildings (*e.g.*, student dormitories) and specialized
8 buildings with dangerous contents (*e.g.*, laboratories). (AR1189; *see also* AR6128 ["UC
9 Berkeley relies on local public safety agencies to provide medical, fire, and emergency response" but
10 provides information about "hazardous materials [responders] may encounter and how to deal with
11 them"].) The EPS Report also notes that increased enrollment has increased demand for the
12 City's public health services. (AR1191.)

13 In the FSEIR, UC Berkeley reasoned that staffing and equipment purchases are "fiscal
14 matters," whereas "CEQA analysis . . . focuses on environmental impacts that could result from
15 construction of new facilities that are required to provide fire department services." (AR846; *see*
16 *also* AR877 at Response A 8.4 ["As to comments related to how increased student population
17 places additional burdens on already overtaxed city services, while this is a matter of concern,
18 under CEQA, staffing and support needs for public services are relevant only to the extent that
19 they result in physical changes that have environmental impacts."].) Regarding fire department
20 response times, UC stated that it would continue to abide by "Continuing Best Practice PUB-2.3"
21 from the 2020 LRDP EIR: to "continue [its] partnership with [Lawrence Berkeley National
22 Laboratory], [Alameda County Fire Department], and the City of Berkeley to ensure adequate
23 fire and emergency service levels to the campus and UC facilities," including "consultation on
24 the adequacy of emergency access routes to all new University Buildings." (AR847.) The
25 FSEIR did not expressly mention public health services in its response. (*See* AR884.)
26 Importantly, the FSEIR based its conclusion on an absence of evidence produced by the City. It

1 found that its analysis in the DSEIR was adequate because “[the City] did not provide
2 information or analysis to suggest that new or physically altered fire protection facilities, the
3 construction of which could cause significant environmental impacts, would be required as a
4 result of the proposed project or increased headcount.” (AR884, at Response 8.22.)

5 The City did, in fact, provide information indicating that increased service calls “will
6 result in a need for additional personnel and new facilities to accommodate them.” (AR1190.)
7 After UC Berkeley released the Final SEIR, the City submitted additional evidence of physical
8 impacts. (See SAR239 [letter from City to UC Board of Regents dated May 13, 2019].) The
9 City identified its current plans for a new fire station in South Berkeley, a new ambulance it
10 already purchased, and its pressing need for larger space for its 911 emergency response call
11 center. (SAR249, SAR340.) The same letter argues that, because Berkeley police spend an
12 increasing proportion of their time responding to an increasing number of student calls, their
13 activities necessarily result in increased air pollution, greenhouse gas emissions, and traffic.
14 (SAR248.) The Court found no substantial contradictory evidence that might show that the
15 increased demand on City of Berkeley services caused by from the Excess Population has not
16 contributed to the City’s plans or purchase of new facilities with an impact on the environment,
17 and the SEIR does not cite or discuss any. The Court finds that it was a prejudicial abuse of
18 discretion to certify the SEIR on the basis of this inadequate analysis.

19 3. *Noise and Aesthetic Impacts from Excess Population*

20 The DSEIR noted that “additional student enrollment could indirectly result in an
21 increase in student rentals of private off-campus housing in Berkeley’s residential
22 neighborhoods,” which might result in “incrementally greater noise generated from existing
23 sources such as human conversations on sidewalks and residential yards, especially during social
24 gatherings.” (AR208.) It dismissed this concern because the “increased headcount would not
25 introduce new sources of noise that may disturb residents, since neighborhoods near UC
26 Berkeley already accommodate a high proportion of off-campus student rentals.” (AR208.)

1 “Continued implementation of the Berkeley Noise Ordinance would also minimize exposure to
2 high noise levels generated on properties in the city.” (AR208.) “Therefore, the Project,
3 accounting for the updated campus headcount projections, would not result in significant indirect
4 environmental impacts in off-campus neighborhoods.” (AR208.)

5 Residents living near campus expressed concern with this analysis. SNC commented that
6 the DSEIR did not consider evidence of the noise impacts of increasing student enrollment by
7 11,285 students who live primarily in off-campus private housing. (AR1653-1654.) Groups of
8 students living off campus are associated with “increases in noise, late-night traffic, and
9 improper refuse disposal.” (AR1654.) Individual commenters also expressed this concern: “The
10 increase in traffic (and in aggressive driving), difficulties in parking, increase in noise from
11 groups of students, and increase in improperly discarded trash and street dumping are only a few
12 of the changes I have seen.” (AR1837.) “[M]ini-dorms frequently generate extreme party noise,
13 often into the wee hours of morning,” but “calling the police when one is kept awake by party
14 noise is often useless, as they are too busy to go to each screaming party.” (AR1861.)
15 Commenters attached pictures of improperly disposed refuse on “move-out day.” (AR1865.)

16 The FSEIR repeated assertions from the DSEIR. “[A]dditional student enrollment could
17 result in an increase in student rentals of private off-campus housing in Berkeley’s residential
18 neighborhoods.” (AR845.) “However, increased headcount would not introduce new sources of
19 noise that may disturb residents, since neighborhoods near UC Berkeley *already accommodate* a
20 high proportion of off-campus student rentals.” (AR845, emphasis added.) The FSEIR reasons
21 that neighborhoods near campus *currently* accommodate large numbers of students. This
22 analysis is an abuse of discretion. The FSEIR compares the its current student enrollment
23 numbers to the present, post-increase status quo and concludes that the increased in student
24 enrollment will not have any effects. That is, the SEIR fails to compare its increased enrollment
25 to a baseline before the increase. In this, the SEIR fails in its own stated goal of studying the
26 impacts of its earlier increases in student enrollment. The Court also cannot find substantial

1 evidence in the record supporting FSEIR's conclusion that a further marginal increase in student
2 enrollment would not exacerbate noise issues or have cumulative impacts.

3 The FSEIR also concludes that other factors will offset or mitigate any noise impacts
4 from increased student enrollment. "Continued implementation of the Berkeley Noise Ordinance
5 would also minimize exposure to high noise levels generated on properties in the city."
6 (AR845.) "Good neighbor relations programs and activities established by the [sic] UC
7 Berkeley, like Happy Neighbors, which educates students and their neighbors about community
8 expectations and relevant policies and laws, will also help to minimize exposure to high noise
9 levels." (AR846.) The SEIR refers to no evidence on which it based a conclusion that these
10 programs reduce the impact of the increase in students residing off-campus in private housing on
11 community noise levels, much less a finding that, if there were a noise impact, these programs
12 effectively reduce the impact to insignificance. The SEIR does not propose that UC adopt these
13 programs as mitigation measures to minimize the ongoing impact of its increased student
14 enrollment levels.

15 In response to community comments regarding moving-day trash, the FSEIR also asserts
16 that "[s]poradic littering does not rise to the level of a significant aesthetic impact under CEQA."
17 (AR846, 911, 1055.) It also similarly references university programs meant to mitigate the
18 impact: "Other issues, such as the visual effect of littering caused by students living off-campus,
19 are also addressed through programs such as Cal Move [I]n and Move Out, which is a program
20 established to decrease the environmental and social impacts of illegal dumping in near-campus
21 neighborhoods at the start and end of the academic year, and to educate students about
22 responsible disposal and reuse strategies." (AR846.) A "significant effect on the environment"
23 is "a substantial, or potentially substantial, adverse change in any of the physical conditions
24 within the area affected by the project" (Guidelines § 15382.) Under the substantial
25 evidence standard, UC Berkeley could reasonably conclude, based on the reported once-a-year
26 nature of this problem, that it was not a "substantial" effect on the environment.

1 4. *Reasonable Alternatives*

2 The City of Berkeley and SBN both fault UC Berkeley for not considering a “reduced
3 enrollment” alternative in the SEIR. Normally, a lead agency must “describe feasible measures
4 which could minimize significant adverse impacts” and “describe a range of reasonable
5 alternatives to the project, or to the location of the project, which would feasibly attain most of
6 the basic objectives of the project but would avoid or substantially lessen any of the significant
7 effects of the project, and evaluate the comparative merits of the alternatives.” (Guidelines
8 § 15126.4(a)(1), § 15126.6(a).) UC Berkeley argues that increased student enrollment was
9 already part of the baseline, but even if it was considered, the SEIR found the increase had no
10 significant impacts from the this excess population. Thus discussion of a reduced enrollment
11 alternative would have been superfluous. Because the court concludes that the environmental
12 analysis was flawed, however, this court cannot endorse UC Berkeley’s conclusion that the lack
13 of analysis of a reduced enrollment alternative is legally permissible. Moreover, UC Berkeley’s
14 argument does not address the future impact of increased enrollment due to the “project.”

15 **III. UPPER HEARST DEVELOPMENT – IMPACTS ON HISTORIC RESOURCES**

16 SBN and the City both argue that UC Berkeley failed to properly define the historical
17 context of the new buildings on Hearst and performs an incomplete analysis of the impact of the
18 project on the historical buildings in the surrounding neighborhood. SBN also argues that the
19 University’s mitigation measure improperly defers mitigation for significant historical impacts.

20 The DSEIR identified four buildings as historical resources near the Upper Hearst
21 Development site, relying on the 2020 LRDP EIR and the California Office of Historic
22 Resources Inventory. (AR134 [identifying the Beta Theta Pi House, Cloyne Court, Founder’s
23 Rock, and Phi K Psi].) The 2020 LRDP EIR in turn drew its list of historic resources from “the
24 National Register of Historic Places, the State Historic Resources Inventory (State Inventory)
25 compiled by the Northwest Information Center at Sonoma State University, the Physical and
26 Environmental Planning unit in Facilities Services at UC Berkeley, and registers of the cities of

1 Berkeley and Oakland.” (AR2312; AR2316 [describing Berkeley landmark ordinance]; *see also*
2 AR2324-2325 [listing designated buildings in the adjacent blocks north of campus]. The DSEIR
3 discussed the historical context of the First Bay Tradition, a style of architecture represented by
4 numerous buildings in Daley’s Scenic Park (also called Daley’s Scenic Tract), near the Upper
5 Hearst Development site. (AR131-140.) The DSEIR found that the Upper Hearst Development
6 project would require the demolition of a parking structure, which UC Berkeley had determined
7 not to be a historical resource. (AR147.) The Upper Hearst Development would also require the
8 demolition and replacement of “most of the primary site design of the Beta Theta Pi house”
9 including removal of 32 feet of a stream-rock training wall and numerous landscaping features.
10 (AR147-148.) The Upper Hearst Development would also “envelop [the Beta Theta Pi house]
11 within the site plan of the adjacent academic building, which bears little resemblance to the
12 historic property in terms of materials, design, scale/mass, and setting.” (AR148.) Additionally,
13 the “scale, mass, and architectural design/materials of the new buildings” would not be
14 “compatible with the massing, size, scale, and architectural features” of the Beta Theta Pi house,
15 Cloyne Court, or Phi Kappa Psi because “the new buildings would be significantly higher and of
16 greater mass and scale than all buildings in the immediate vicinity.” (AR149.)

17 The DSEIR concluded that the Upper Hearst Development would “impair the integrity of
18 two historical resources identified in the 2020 LRDP” and “would impair the integrity of a third
19 . . . immediately north of the Project site.” (AR150.) It proposed a mitigation measure
20 (designated “MM-CUL-1”) requiring that, “[p]rior to approval of final design plans for the
21 Upper Hearst Development, UC Berkeley shall retain a historic architect meeting the National
22 Park Service Professional Qualification Standards for historic architecture to review plans for the
23 proposed academic and residential buildings” who would “provide input and refinements to the
24 design team regarding modifications to the palette of exterior materials to improve compatibility
25 with neighboring historical resources and compliance with” national standards. (AR150.) The
26 DSEIR found that the Upper Hearst Development would “degrade the integrity of feeling and

1 setting of historical resources adjacent to the Project site” as a “significant and unavoidable
2 cumulative impact on historical resources” and that MM-CUL-1 would “reduce this impact to
3 the extent feasible.” (AR150.)

4 Several public commenters expressed concern about the DSEIR’s description of the
5 Upper Hearst Development’s historical context. (*E.g.*, AR1206 [City of Berkeley]; AR1150-
6 1151 [Berkeley Landmark Preservation Commission]; AR1634-1639 [Berkeley Architectural
7 Heritage Association].) One particularly thorough letter from the Berkeley Architectural
8 Heritage Association (“BAHA”) identified an additional 25 buildings in the neighboring
9 blocks—eleven of them designated landmarks by the City of Berkeley Landmark Preservation
10 Commission. (AR1638-1639.) It also argued that the DSEIR analysis did not recognize Daley’s
11 Scenic Park as an independently significant historical resource. (AR1634, 1639.) The eleven
12 listed buildings are “presumptive” historic resources because they are listed on a local historic
13 registry. (AR1638-1639; *see* Pub. Res. Code § 21084.1; Guidelines § 15064.5(a)(2).) One
14 building, the Phi Delta Theta chapter house, is listed on the National Register of Historic Places.
15 (AR1638.) The other buildings (and Daley’s Scenic Park as an area) may constitute historical
16 resources, subject to the discretion of UC Berkeley, based on the evidence. (*See* Guidelines
17 § 15064.5(a)(3) [“Any . . . building, structure, site, area, [or] place . . . which a lead agency
18 determines to be historically significant . . . may be considered to be an historical resource,
19 provided the lead agency’s determination is supported by substantial evidence in light of the
20 whole record.”].)

21 The FSEIR responded to comments by noting that the Upper Hearst Development is not
22 situated in a designated historic district (AR897) and that the DSEIR “is not intended as a
23 comprehensive survey or original scholarship on the history of the project site and its
24 surroundings.” (AR862.) The FSEIR noted that many of the buildings that BAHA identified are
25 located several blocks from the project site and that, “[i]n keeping with standard CEQA and
26 professional practice,” the DSEIR analyzed the potential impacts on historical resources located

1 within or directly adjacent to the project site. (AR898.) The FSEIR notes that, although the
2 remaining buildings were not discussed in the DSEIR by name, they are part of the historical
3 context and of the nearby neighborhood, which was discussed in some detail. (AR898; *see*
4 AR131-140.)

5 In its follow-up letter to the FSEIR, the City of Berkeley communicated a concern that
6 MM-CUL-1 was an inadequate mitigation measure because it did not reduce the severity of the
7 impact to a "less than significant" level. (SAR257.) The City also objected that it "relegates the
8 input of a historical architect to the status of unenforceable best practices, and delays this input
9 until a later unspecified date" because it "would merely result in recommendations for exterior
10 building materials that would be forwarded to University decision-makers to 'consider,' without
11 any demonstrable enforceability to avoid or reduce the severity of the impact." (SAR257-258.)
12 The City argued that "[t]he deferred input of an historical architect on future proposed redesigns
13 following CEQA review fails to avoid or substantially reduce this impact," which, "contrary to
14 the University's assertions, . . . is not unavoidable." (SAR259.)

15 In its findings adopting the SEIR and approving the project, the University found that the
16 Upper Hearst Development would "degrade the integrity of feeling and setting of historical
17 resources adjacent to the Project site, which will contribute to a significant and unavoidable
18 cumulative impact on historical resources" and that adopting MM-CUL-1 was feasible and
19 would "reduce this impact to the extent feasible." (AR24-25.) It also found that, "even with
20 implementation of this measure, significant unavoidable impacts [would] occur" and that
21 "specific economic, legal, social, technological, or other considerations make it infeasible to
22 reduce this impact to a less than significant level." (AR25.)

23 The DSEIR's inventory of four potentially affected buildings as historical resources is
24 supported by substantial evidence, the inventories consulted for the DSEIR and the 2020 LRDP
25 EIR. (*See* AR862 [describing "due diligence" steps taken, including site visits, records research,
26 and experts consulted]; *see also* AR130, 141-145.) The DSEIR also discusses the major

1 historical events and aesthetic and architectural features that give the area north of campus its
2 historical context and value and feeling. In so doing it describes the historical environmental
3 setting of the surrounding area, including the First Bay Tradition and the structures that survived
4 1923 Berkeley Fire.

5 UC Berkeley's decision to exclude the buildings on BAHA's list from consideration is
6 also not an abuse of discretion. The resources in the list may qualify as "historical resources."
7 (*See* Guidelines § 15064.5(a)(1)-(4).) But CEQA only requires a lead agency to consider as an
8 impact a "substantial adverse change in the significance of an historical resource." (Guidelines
9 § 15064.5(b).) A "substantial adverse change in [] significance" means "physical demolition,
10 destruction, relocation, or alteration of the resource or its immediate surroundings such that the
11 significance of an historical resource would be materially impaired." (Guidelines
12 § 15064.5(b)(1).) The City and SBN argue that the Upper Hearst Development might "alter[]"
13 the "immediate surroundings" of the additional historical resources identified by BAHA and that
14 UC Berkeley abused its discretion by failing to consider the project's potential impacts on those
15 buildings. The unconsidered buildings are as close as a block away to several blocks away.

16 UC Berkeley did not abuse its discretion in determining that buildings in the "immediate
17 vicinity" of the project site means buildings within the project side or immediately adjacent to
18 it—that is, buildings across the street were included; those a block away were not. The type of
19 impact being discussed here (a mismatch of scale and architectural style) may affect the
20 historical feel of a building, but proposed plans and the description of the environmental setting
21 are substantial evidence from which a reasonable person could conclude that the impact of the
22 project would be insignificant for all but the closest buildings. There is no evidence that the
23 addition of a new building would have a material impact on the historical significance of the
24 nearby historical structures. (*Cf. Taxpayers for Accountable School Bond Spending v. San Diego*
25 *Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1045 [finding no abuse of discretion when
26

1 school district failed to consider impact of increased field lighting from new football stadium on
2 historical significance of nearby neighborhood].)

3 UC Berkeley's decision not to consider Daley's Scenic Tract as a historical district is also
4 not an abuse of discretion. The FSEIR found by substantial evidence that Daley's Scenic Tract
5 is not listed in a national, state, or local historic register. It is therefore not a "mandatory" or
6 "presumptive" historical resource. (See Pub. Res. Code § 21084.1; Guidelines § 15064.5(a)(1),
7 (2); see also *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1051 [discussing
8 "mandatory," "presumptive," and "discretionary" as common labels for three categories of
9 treatment for historical resources under CEQA].) SBN argues that UC Berkeley abused its
10 discretion by failing to consider whether Daley's Scenic Tract constitutes a discretionary
11 historical resource. SBN analogizes this to the *Valley Advocates* case, arguing that the Court
12 should grant the writ because UC Berkeley "did not, in fact, exercise its discretion" to determine
13 whether Daley's Scenic Tract is a historical resource. (*Valley Advocates v. City of Fresno* (2008)
14 160 Cal.App.4th 1039, 1061.) In that case, however, "the City Council [of Fresno] was
15 misinformed about its discretion" because it had previously denied an application for historical
16 recognition for the same building. (*Id.* at p.1061.) And although the SEIR does not expressly
17 consider the regulatory factors for weighing whether a resource could, in UC's discretion, be
18 considered a historical resource, there is no indication that UC Berkeley was under a
19 misapprehension of its ability to do so here. Instead, it appears to have been aware of the history
20 and significance of the scattering of First Bay Tradition homes surviving in Daley's Scenic
21 Tract. (See, e.g., AR134-135, 862, 897.) The SEIR discussed the importance of the
22 neighborhood as context but did not find the area itself to be a historical resource independent of
23 the collection of historical buildings within it.

24 SBN argues that mitigation measure MM-CUL-1 improperly defers mitigation because it
25 only requires that the architect "provide input and refinements" but no actual requirements. The
26 DSEIR proposed, and UC Berkeley adopted, MM-CUL-1, which provides as follows:

1 Prior to approval of final design plans for the Upper Hearst Development,
 2 UC Berkeley shall retain a historic architect meeting the National Park
 3 Service Professional Qualifications Standards for historic architecture to
 4 review plans for the proposed academic and residential buildings. The
 5 historic architect shall provide input and refinements to the design team
 6 regarding modifications to the palette of exterior materials to improve
 compatibility with neighboring historical resources and compliance with the
 Secretary of Interior's Standards. This review shall include, but not be
 limited to, suggestions for incorporating exterior materials, such as wood or
 brick, in the design. (AR150.)

7 UC Berkeley argues that its adoption of MM-CUL-1 should not be judged against the usual
 8 standards for mitigation measures because it does not purport to reduce the impact to a "less than
 9 significant" level. (Resps.' Opp. to Petr. SBN's Opening Merits Brief, at p.35 [citing AR150];
 10 *see also* AR25 [findings of significant and unavoidable impact]; AR2367 [2020 LRDP EIR] .)
 11 This argument is contrary to the text and policy underlying CEQA: "Each public agency shall
 12 mitigate or avoid the significant effects on the environment of projects that it carries out or
 13 approves whenever it is feasible to do so." (Pub. Res. Code § 21002.1; *see also* Pub. Res. Code
 14 § 21002 ["[I]t is the policy of the state that public agencies should not approve projects as
 15 proposed if there are feasible alternatives or feasible mitigation measures available which would
 16 substantially lessen the significant environmental effects of such projects."].) Even if a lead
 17 agency finds that environmental impacts would remain significant, it still must adopt feasible
 18 measures to mitigate or avoid those impacts.

19 That said, UC Berkeley did not abuse its discretion by adopting MM-CUL-1. UC
 20 Berkeley argues that it is not deferring mitigation because MM-CUL-1 requires it to take specific
 21 steps, because those steps are to be guided by the Secretary of the Interior's standards, and
 22 because mitigation to historical impacts is inherently subjective and does not lend itself to
 23 objective criteria. As the term is used in CEQA, "[m]itigation' includes: [¶] (a) Avoiding the
 24 impact altogether by not taking a certain action or parts of an action[; and] [¶] (b) [m]inimizing
 25 impacts by limiting the degree or magnitude of the action and its implementation"
 26 (Guidelines § 15370.) To ensure that mitigation measures are adequate, an "EIR shall describe

feasible measures which could minimize significant adverse impacts.” (Guidelines § 15126.4(a)(1).) “Formulation of mitigation measures shall not be deferred until some future time.” (Guidelines § 15126.4(a)(1)(B).) “The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project’s environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.” (*Ibid.*) UC Berkeley’s adopted mitigation measure MM-CUL-1 meets these standards because it commits the University to hiring a qualified historical architect, because it requires the University to adopt the Secretary of Interior’s Standards as a performance standard (see Guidelines §15064.5(b)(3)), and because it identifies changes to exterior materials as the kinds of changes that will be considered and potentially incorporated in the mitigation measure.

UC Berkeley also did not abuse its discretion by concluding that the Upper Hearst Development’s impact on the historical resources would be significant and unavoidable and that the benefits of the project outweigh the historical impacts. (See AR25, 40.) SBN argues that UC Berkeley abused its discretion by rejecting a reduced scale alternative. (AR38.) UC’s factual findings included a finding that:

The Reduced Scale Alternative would meet most of the Project objectives, but to a lesser extent than would the Project. The Alternative would better meet objectives to maintain the character and setting of surrounding historic buildings and to build facilities that are compatible with the surrounding neighborhood. However, by reducing the scale of the new GSPP, the Alternative would not fully meet objectives related to fulfilling the academic needs of the School’s program. Similarly, because the residential building includes fewer residential units than proposed, the alternative would not fully meet objectives to provide housing on-site to serve current market demand and to address the shortage of campus housing. By reducing the scale of development, the Alternative would meet the objective of accommodating increased School enrollment to a lesser extent than would the Project. The potential removal of additional parking spaces also would not meet the objective of maintaining as much parking as possible

1 on-site. Because the Reduced Scale Alternative would meet Project
2 objectives to a lesser extent than would the Project, the University rejects
this alternative. (AR38.)

3 SBN argues that UC Berkeley did not actually find that the reduced scale alternative was
4 infeasible. UC Berkeley's findings noted that a reduced scale alternative would lessen some
5 impacts but exacerbate others. (*See also* AR251-254 [discussion in DSEIR reaching same
6 conclusion].) Substantial evidence supports the university's decision that the environmental
7 benefits of the reduced scale alternative were outweighed by its downsides and that it is
8 infeasible to reduce that impact to a less-than-significant level. (AR24-25.)

9 **IV. UPPER HEARST DEVELOPMENT –TRAFFIC AND NOISE IMPACTS**

10 The City also argues that the SEIR's analysis of the Upper Hearst Development failed to
11 adequately analyze potential traffic and noise impacts. The City objected to the DSEIR's traffic
12 analysis, arguing that the DSEIR assumed without evidence that reducing existing parking at the
13 Upper Hearst Development site would reduce trip generation rather than shift parking demand
14 elsewhere. (*See* AR1194.) Responding to the City's comment, the FSEIR justified its reliance
15 on indirect measures of trip generation because alternatives to university parking, such as street
16 parking and off-campus parking lots, are open to the public and University-affiliated parking
17 cannot be isolated from general public parking at those locations, so direct observation of trip
18 generation is infeasible. (AR884-885.) Instead the FSEIR, like the 2020 LRDP EIR from which
19 it tiers, relies on indirect data, such as survey data, intersection traffic data, on-campus parking
20 permits and parking lot occupancy rates. (AR885.) "[T]he UC Berkeley-operated parking
21 supply decreased by about 1,130 spaces (about 15 percent) from 2001-2002 to 2016-2017, and
22 during the same period, the drive-alone mode share for all population groups, as well as Campus
23 Park trip generation, decreased." (AR885.) The data behind these statements are substantial
24 evidence from which a reasonable agency could conclude that a marginal decrease in parking
25 availability will marginally decrease car commutes by inducing more students, faculty, and staff
26

1 to commute by public transportation, bicycle, or foot. This conclusion was not an abuse of
2 discretion.

3 The City also argues that the SEIR failed to consider traffic impacts related to
4 construction of the Upper Hearst Development. (*See* AR1195.) It did, however, consider those
5 impacts, and it concluded that they “would be less than significant and no mitigation is therefore
6 required.” (AR879.) The City argues that the SEIR’s continuing best practices, which were
7 adopted from the 2020 LRDP EIR, “do not include, as they should, City review and approval of
8 the Construction Traffic Management Plans.” (AR1195.) The SEIR expressly adopted
9 continuing best practices from the 2020 LRDP EIR, which mandate that the university require
10 contractors to prepare of a construction traffic management plan early in the planning process—
11 including proposed truck routes, construction hours, employee parking, and equipment staging—
12 and schedule projects to minimize overlap between excavation and other truck-heavy portions of
13 construction projects. (AR879, 886 [responding to City’s comment at AR1195]; *see* AR221
14 [describing continuing best practices TRA-3-a, TRA-3-b, and TRA-3-c].) These best practices
15 do not mandate that the University get City approval for its traffic and construction parking
16 plans, but the City provides no evidence of a legal requirement to do so or evidence that a failure
17 to do so would result in a significant impact to the environment. UC Berkeley’s decision to
18 certify the traffic analysis of the Upper Hearst Development in the SEIR was not an abuse of
19 discretion.

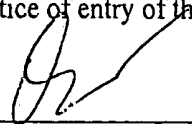
20 The City also objected to the SEIR’s analysis of noise impacts of the Upper Hearst
21 Development’s potential noise impacts on nearby noise-sensitive land uses like nearby
22 multifamily housing developments, student housing, and academic buildings. The City argues
23 that the SEIR’s analysis was flawed because it measured the baseline noise level during the
24 evening commute, resulting in an artificially high baseline for noise impacts. The City also
25 argues that the SEIR failed to describe the sources of noise that might result from the Upper
26 Hearst Development, including both ongoing sources of noise like HVAC operations and

1 sporadic sources of noise such as outdoor activities or special events. The City objects that the
2 SEIR reached its conclusion that no significant noise impacts would result without considering
3 the number, size, time, and frequency of events to be held at the event center at the Upper Hearst
4 Development. The City presented these arguments in its comments to the DSEIR. (See
5 AR1202.) In response, the FSEIR noted that peak-hour ambient noise measurements are used to
6 characterize "the worst daily noise exposure near a Project site" and is a "more conservative
7 approach to assume that new residents on the Project site would be exposed too this noise level."
8 (AR890.) The FSEIR also concluded that "the noise associated with outdoor events would not
9 cause City of Berkeley Noise Ordinance limits to be violated at nearby sensitive receptors and
10 therefore[] would be less than significant." (AR908; *see also* AR201-202 [discussing noise from
11 HVAC and outdoor events, concluding less than significant impact on nearby sensitive
12 receptors].) Certification of the SEIR on this issue was therefore not an abuse of discretion.

13 **V. ORDER**

14 SBN's petition for writ of mandate is **GRANTED**. The City of Berkeley's petition for
15 writ of mandate is **GRANTED**. SBN and Berkeley shall meet and confer to draft a proposed
16 judgment and form of writ consistent with this Order and shall jointly file the proposed judgment
17 and form of writ within 10 court days of service of notice of entry of this order.

18 Dated: July 9, 2021

19 
20 _____
21 Brad Seligman
22 Judge of the Superior Court
23
24
25
26

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG19022887 (Related to RG19023058)

Case Name: Save Berkeley's Neighborhoods v. The Regents of the University of California

RE: ORDER GRANTING PETITIONS FOR WRIT OF MANDATE

CLERK'S CERTIFICATE OF SERVICE

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed: 7/9/2021

Ghalisa Castaneda
Courtroom Clerk, Dept. 23

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VERIFICATION

I, Liz Perlman, am the Executive Director of Petitioner American Federation of State, County, and Municipal Employees Local 3299. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. The facts alleged in the above Petition are within my own knowledge and I know these facts to be true, except as to any matters alleged therein on information and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 20, 2021, in Oakland, California.



Liz Perlman

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8 **BERKELEY CITIZENS FOR**
9 **A BETTER PLAN (BC4BP)**

**ENDORSED
FILED
ALAMEDA COUNTY**

AUG 26 2021

CLERK OF THE SUPERIOR COURT
By K. Ghee Deputy

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

9 BERKELEY CITIZENS FOR A BETTER
10 PLAN,

11 Petitioner and Plaintiff,

12 vs.

13 THE REGENTS OF THE UNIVERSITY OF
14 CALIFORNIA, an agency of the State of
15 California; CAROL T. CHRIST, in her official
16 capacity as Chancellor of the University of
17 California, Berkeley; MICHAEL V. DRAKE,
18 in his official capacity as President of the
19 University of California; and DOES 1
20 THROUGH 20, inclusive,

21 Respondents and Defendants.

22 HELEN DILLER FOUNDATION, a domestic
23 non-profit public benefit corporation;
24 PROMETHEUS REAL ESTATE GROUP,
25 INC., a California Corporation; and OSKI 360,
26 a limited liability California company,
27 UNIVERSITY OF CALIFORNIA,
28 BERKELEY, and DOES 21 THROUGH 40,

Real Parties in Interest.

No. RG21109910

**FIRST AMENDED VERIFIED PETITION
FOR WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

**[California Environmental Quality Act
(CEQA), Pub. Res. Code § 21000, et seq.);
Code of Civ. Proc. §§1094.5, 1085]**

INTRODUCTION

1. This California Environmental Quality Action (CEQA) case challenges a Final Environmental Impact Report (FEIR), prepared by the University of California, Berkeley (UCB) for its 2021 Long Range Development Plan (LRDP), effective until 2036-37, and for two construction projects located in different parts of Berkeley: Helen Diller Anchor House (Anchor), a mixed use 16-story high-rise, and People's Park (Park), a group of buildings including a 17-story mixed use high-rise (collectively the "Project"). Petitioner seeks an order setting aside the certification of the FEIR and all of the University of California Regents' (Regents) approvals for the Project.

2. The FEIR fails to comply with the informational requirements of CEQA, caused in great part by UCB's decision to draft an EIR that is at once underinclusive – insofar as it fails to address the proposed population increase – and over-inclusive – insofar as it shoves two construction projects into the EIR for the LRDP instead of first preparing an EIR for the LRDP and then later "tiering off" that EIR for the Park and Anchor projects. The result is an unintelligible and legally inadequate EIR that fails to include necessary and legally required baseline data and substitutes unsupported summary conclusions for meaningful discussion. It meets neither CEQA's requirements for an LRDP EIR nor those for the Anchor and Park individual housing projects.

3. The FEIR is materially deficient because it fails to examine the proposed population increase set out in the LRDP, which itself constitutes a "project" that must be discussed in the FEIR. The LRDP proposes a significant population increase – more students, faculty, staff and visitors – over the last LRDP enacted in 2005, but the FEIR for the LRDP does not examine alternatives to the population-increase project or mitigations for it. This failure is substantial and renders the FEIR wholly inadequate.

4. The FEIR under-describes the extent of the impacts from its proposed population increase by (among other things) providing inconsistent and unsupported data relating to its

1 baseline and projected populations. For example, the FEIR fails to provide an adequate project
2 description by never specifically describing the makeup of the proposed population increase. Are
3 the students full-time, part-time, extension students, residents of Berkeley, residents of
4 somewhere else, or what? The FEIR does not describe or discuss the large population of
5 unenrolled students (who attend classes through a variety of regular programming) and contract
6 workers who flood the main campus and other UCB sites on a daily basis as part of UCB's well-
7 documented efforts to out-source what had previously been staff jobs to third-party contractors.
8 By classifying large numbers of outsourced workers and students as visitors, the FEIR conceals
9 and understates the baseline and proposed populations that it is required to document and
10 describe as part of its population-increase project and their environmental impacts.

11 5. Nowhere does the FEIR examine alternatives to the proposed population increase or
12 identify the impacts occasioned by that aspect of the project. Instead, the FEIR examines impacts
13 of planned-for demolition and construction activities that are presumed to be required to
14 accommodate this proposed population increase. The bases for the presumptions within the FEIR
15 are unsupported, however, as the population increase is not fully disclosed or discussed.

16 6. In addition to the failure to address the proposed population increase, the alternatives
17 and mitigation to the "Project" (and each subproject) are inappropriately constrained in the FEIR
18 by the limited geographic scope of the LRDP, which fails to satisfy the spirit and letter of the law
19 that mandates the creation of an LRDP for each university within the UC System. Rather than
20 address the entirety of the UC Berkeley campus system – which includes multiple properties
21 within the City of Berkeley and those in adjacent or nearby cities such as Albany, Oakland,
22 Emeryville, and Richmond – the Regents limited the LRDP geographically to such an extent that
23 it resembles an unnatural hodge-podge of cherry-picked properties (some within Berkeley, some
24 not) designed to make the need for development on selected sites seem more acute or justifiable
25 in the FEIR. The result is a legally inadequate LRDP that fails to capture the true parameters of
26 the UCB "campus" and does not present a single, unified development plan for UCB as a whole.

1 As a result, the FEIR then fails set out the actual reasonable alternatives and mitigation measures
2 available. For example, the FEIR does not consider alternatives such as using other parts of UC's
3 properties to reduce the impacts from its population growth, instead of starting from the
4 conclusion that all of the student housing to accommodate the growth must be constructed close
5 to the main campus.

6 7. Throughout, the FEIR fails to include supportable baselines to show the difference
7 between current environmental conditions and those expected from the Project. This failure
8 appears to be, in part, due to the decision between the drafting of the DEIR and FEIR to change
9 the baseline dates for some of the impacts but not others. As a result, the few baselines that are
10 included are inconsistent and the discussion of the impacts, alternatives, and mitigation are
11 unsupported. For example, the manipulation of the dates for measuring population growth kept
12 changing making it impossible for any decision-maker to know what level of impacts that growth
13 would cause.

14 8. Rather than a discussion of Project impacts, the FEIR presents a series of unsupported
15 summary conclusions, which are wholly inadequate under CEQA. As a result, other than vague
16 assurances scattered around the FEIR, there are few analyses regarding the negative
17 environmental impacts from the Project. The "support" for the FEIR's summary conclusions is
18 particularly lacking. While the FEIR includes tables and charts, sometimes unsourced, there is no
19 information as to how they are relevant for measuring negative impacts from the Project. Where
20 there should be expert reports and analyses based on them, there are none. As an example, we
21 learn from the FEIR's discussion about the Anchor and Park projects that they require extensive
22 foundation piers for the high-rises; however, the FEIR does not include any site-specific soils
23 studies indicating the below-ground conditions. Instead, the FEIR includes a general description,
24 based on documents in the UCB geology department, of what one *might* find below ground in
25 different parts of Berkeley. Needless to say, non-specific support of this type is wholly
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27
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1 inadequate under CEQA (and embarrassingly amateurish for such an esteemed and well-funded
2 institution).

3 9. Many of the few expert reports that are included with the FEIR are materially flawed
4 and resemble slapdash rush jobs intended to give a veneer of compliance with CEQA. For
5 example, after BC4BP pointed out that the health risk assessment report issued in connection
6 with the DEIR failed to include key sensitive populations – including a hospital and infant
7 childcare centers operated by UCB itself (a startling omission) – a hasty and incomplete
8 “revised” report was issued for the FEIR that glossed over the previous omissions and ignored or
9 unjustifiably minimized the potentially serious health impacts on these newly identified
10 populations. Other sections of the FEIR, however, were not updated to reflect the corrected
11 population information, rendering the FEIR internally inconsistent and its conclusions
12 unsupported and suspect.

13 10. The FEIR does not discuss the conflicts between the Project and the policies of the
14 Regents and those of Berkeley. For example, the FEIR does not discuss how the Project’s
15 decision to demolish or damage 40 historic structures complies with UCB’s New Century Plan,
16 the Master Landscape Plan, the Historic Landscape Plan, the Design Review and existing best
17 practices documents. Given the enormity of UCB’s plans to clear out so much of Berkeley’s
18 history and destroy or significantly “remodel” so many of its unique landmarks, one would
19 expect much more attention on this topic than just lists of the ones on the “chopping block.”
20 Surely, there should have also been at least an attempt to explain why this much destruction was
21 necessary and that there were absolutely no other alternatives.

22 11. In some places, UCB admits that its Project will cause significant negative impacts on
23 the environment but then either provides no mitigation measures or ones that are ineffective or
24 illogical at reducing the negative impacts to “less than significant.” The FEIR ignores feasible
25 alternatives that could prevent negative impacts in the first place and instead, concludes that a
26 Statement of Overriding Considerations will suffice. This approach is naturally antithetical to
27

1 CEQA because the Legislature intended to reduce or eliminate negative impacts to the
2 environment, not skirt over them and just conclude, based on nothing but UCB's preferences,
3 that the public should live with them. Unfortunately, "living with" the negative impacts of the
4 Project will severely and negatively impact Berkeley residents and those who study and work
5 there.

6 12. In its alternatives discussion, UCB never explains why its LRDP must have all of the
7 housing development within a one-mile radius of the campus or why junior, senior, and graduate
8 students cannot be provided housing on one or more of UCB's other owned sites away from the
9 campus. Nor does it explain why some of the future desired population cannot be assigned to one
10 of UC's other eight campuses. Without discussion of these other alternatives, the decision-
11 makers and the public cannot grasp why it is necessary for UCB to create as many environmental
12 impacts resulting from the Project.

13 13. In many cases, the FEIR fails to answer questions or respond to criticisms submitted
14 by commentators. Instead, it refers the reader to either a "master response" that is irrelevant to
15 the question or to an answer that then incorporates some other answer.

16 14. These evasive responses are unfortunately consistent with the Leading Agency's
17 complete stonewalling of reasonable requests for information prior to the issuance of the FEIR,
18 and evidence the Lead Agency's attempts to hamper the attempts of the public to ascertain the
19 true scope and impacts of their planned Project.

20 PARTIES

21 15. Petitioner BERKELEY CITIZENS FOR A BETTER PLAN ("BC4BP") is an
22 unincorporated association that was formed in 2020 to advocate for a better Project – one that
23 protects the environment and does not diminish the health of and the quality of life for Berkeley
24 residents and others impacted by the Project. It is an association of interested persons and
25 organizations who bring this citizen suit under CEQA because they are concerned about UCB's
26 failure to comply with its legal duties under CEQA, specifically its failure to prepare and
27

1 circulate to the public a legally adequate EIR “informational document” for the Project.
2 BC4BP’s membership includes Berkeley residents, UCB alumni, employees and students -- who
3 live in or near to the geographic area identified in the FEIR as the development area and will be
4 severely impacted by the Project. The membership also includes individuals, including UCB
5 alumni, employees and students who live in other areas of Alameda County that will be
6 impacted by UCB’s Project. These non-Berkeley citizens are concerned that they too will be
7 negatively impacted by the Project as they work, study, and travel to and from the geographic
8 areas identified in the FEIR as the Project site and by the proposed population increase, which
9 will necessarily have environmental impacts beyond the narrow geographic area examined by the
10 FEIR. BC4BP and its members are seeking a court order setting aside all of the approvals
11 granted by the Regents, the certification of the FEIR, and requiring that UCB draft and circulate
12 to the public a legally adequate EIR as required under CEQA.

13 16. Respondent and Defendant THE REGENTS OF THE UNIVERSITY OF
14 CALIFORNIA (Regents) “govern the University pursuant to authority granted by the state
15 Constitution. (Cal. Const., art. IX, § 9.)” The California Constitution expressly invests the
16 Regents with “full powers of organization and government” over the University. (Cal. Const.,
17 art. IX, § 9, subd. (a).) This general grant of power gives the Regents “virtual autonomy in self-
18 governance.” (*Regents of University of California v. City of Santa Monica* (1978) 77 Cal.App.3d
19 130, 135); *Smith v. Regents of University of California* (1993) 4 Cal.4th 843, 848, 852; *Campbell*
20 *v. Regents of University of California* (2005) 35 Cal.4th 311, 320-321.) The Regents have
21 exclusive control over UCB and the Project. The Regents acted as both the party undertaking the
22 Project and as the lead agency for CEQA purposes. The Regents have been served with the
23 Petition, timely filed on August 19, 2021.

24 17. Respondent and Defendant CAROL T. CHRIST is the Chancellor of UCB, and is
25 named here solely in this capacity. Chancellor Christ has exclusive management authority,
26 through the Regents, over UCB, including real properties, development plans, and the Project.
27

1 She acts as the chief executive of UCB. As Chancellor, she applied to and sought permission
2 from the Regents to pursue approval for the Project from the Board of Regents. She also
3 undertook the Project, including by signing contracts and taking other steps towards completion
4 of it, only with the authority and permission of the Regents. While Carol Christ acts as the
5 Chancellor of UCB she has no authority to enter into development contracts or develop
6 properties owned by the Regents without approval from the Regents. For example, the contract
7 between Anchor House and the Regents as part of the Project identifies the two parties as
8 follows: "The [contract] . . . effective as of April 21, 2020. . . is entered into by The Helen Diller
9 Foundation (the "Donor" or "Foundation") and The Regents of the University of California, on
10 behalf of the Berkeley campus. . . ." Above the contract signature line, it states: "The Regents of
11 the University of California fbo (for the benefit of) University of California, Berkeley." It is
12 signed "By: Carol T. Christ, Chancellor." On page 17 of a related contract for the Anchor project
13 Carol Christ signed her name for the Regents who are listed as "Owner." Carol Christ applied to
14 the Regents for approval and permission to undertake the Project for the benefit of the University
15 of California Berkeley campus subject to the authority and dependent on the approval of the
16 Board of Regents. Carol Christ has been served with the Petition, timely filed on August 19,
17 2021.

18 18. Respondent and Defendant MICHAEL V. DRAKE is President of the University of
19 California and named here only in his official capacity. The President leads the institution's nine
20 campuses and is accountable to the Board of Regents, the governing body of the Regents of the
21 University of California. While Carol Christ is the chief executive of UCB, Michael Drake is the
22 chief executive of the entire UC system. Carol Christ reports to Michael Drake, who in turn
23 reports to the Board of Regents. On information and belief, Petitioner and Plaintiff alleges that
24 prior to the Board of Regents approving the Project on July 22, 2021, Michael Drake and Carol
25 Christ prepared the requests for the Board of Regents to consider and approve the Project. As
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1 such, they were applicants to the Board of Regents for approval of the Project. They undertook
2 the Project. Michael Drake was served with the Petition, timely filed on August 19, 2021.

3 19. Petitioner is unaware of the true names and capacities of respondents fictitiously
4 named herein as DOES 1 through 20 and sues such respondents by fictitious names. When the
5 true identities and capacities of these respondents have been determined, Petitioner will amend
6 this petition, with leave of the Court, if necessary, to insert such identities and capacities. Each of
7 the respondents is the agent and/or employee of another respondent, and each performed acts on
8 which this action is based within the course and scope of such respondent's agency and/or
9 employment.

10 20. Real Party in Interest HELEN DILLER FOUNDATION is a domestic
11 non-profit public benefit corporation and is an interested party because it is undertaking the
12 Archer project according to a contract entered into between the foundation and the Regents.
13 Although it is not named in the Notice of Determination dated July 22, 2021, UCB has publicly
14 described it as undertaking that portion of the Project known as the Helen Diller Anchor House).

15 21. Real Party in Interest PROMETHEUS REAL ESTATE GROUP, INC., is a California
16 Corporation and, according to information provided by UCB and in a contract, it is an interested
17 party because it will be the Oversight Manager of the Anchor development. Although it is not
18 named in the Notice of Determination dated July 22, 2021, UCB has publicly described it as
19 undertaking the Anchor project, which is part of the Project.

20 22. Real Party in Interest OSKI 360 is a limited liability California corporation that will
21 be handling the operation of Anchor according to its management and operating agreement with
22 the Helen Diller Foundation. OSKI 360 is a subsidiary of the Helen Diller Foundation and is
23 described as managing Anchor in the contract between the Regents and the foundation. Although
24 it is not named in the Notice of Determination dated July 22, 2021, UCB has publicly described
25 it as undertaking the Anchor project, which is part of the Project.

22.5 Real Party in Interest University of California, Berkeley, is listed as the named applicant and party undertaking the Project in the Notice of Determination, attached as Exhibit C and is named here as a real party in interest only for that reason, and not because it should be joined as a party or a real party in interest in the original Petition or this First Amended Petition. As explained in paragraphs 16-18 above, and incorporated herein, the University of California, Berkeley is a campus and was not the applicant nor did it undertake the Project because it had no authority to apply for or undertake the Project. It is part of the Regents' corporate holdings, not a separate entity, and had no legal ability to enter development contracts or undertake the Project, independent of Chancellor Carol Christ who was named in the original Petition. The University of California Berkeley is not a person or persons that had authority from the Regents to apply to the Board of Regents for approval of the project permits. Unknown persons at the UCB campus and elsewhere had the limited role of preparing the LRDP and overseeing preparation of the LRDP EIR, under the supervision of Carol Christ, but had no legal authority to apply to the Board of Regents for approval of the Project or to undertake it. Only the Regents and the Chancellor and/or the President of the University, through authority and approval of the Regents, had authority to and did undertake the Project. The Regents have exclusive authority over UCB and the campus did not legally need to be joined as a real party in interest or as a respondent and defendant, once the UCB Chancellor, the President of UC, and the Regents were named in the original Petition. The Chancellor of UCB was the applicant for the benefit of UCB to obtain approval from the Board of Regents and she undertook the Project. The Regents, Carol Christ, and Michael Drake have all been served with the original Petition, timely filed on August 19, 2021.

22.6 Petitioner is unaware of the true names and capacities of real parties in interest fictitiously named herein as DOES 21 through 40 and sues such respondents by fictitious names. When the true identities and capacities of these real parties have been determined, Petitioner will amend this petition, with leave of the Court, if necessary, to insert such identities and capacities.

1 Each of the respondents is the agent and/or employee of another respondent, and each performed
2 acts on which this action is based within the course and scope of such respondent's agency
3 and/or employment.
4

5 JURISDICTION AND VENUE

6 23. Petitioner hereby realleges and incorporates by reference the preceding paragraphs.

7 24. This court has jurisdiction under Public Resources Code sections 21168 and 21168.5
8 and under Code of Civil Procedure sections 1085 and 1094.5. Venue is proper in Alameda
9 County because the parties are located there. Venue for this action also properly lies in this Court
10 because the cause of action alleged in this Petition arose in Alameda County. The Project is
11 proposed for development in Alameda County, and the impacts of the Project will occur in
12 Alameda County.

13 25. Petitioner has performed any and all conditions precedent to filing the instant action
14 and has exhausted any and all available administrative remedies to the extent possible and
15 required by law. Petitioner submitted numerous objections to approval of the Project and the
16 Respondents' inadequate analysis and mitigation of the Project's impacts in the FEIR prepared
17 for the Project.

18 26. Respondents have taken final agency actions with respect to adopting the FEIR and
19 approving the Project. Respondents have a duty to comply with applicable state laws, including
20 but not limited to CEQA, prior to undertaking the discretionary approvals at issue in
21 this lawsuit. Petitioner possesses no effective remedy to challenge the approvals at issue in this
22 action other than by means of this lawsuit.

23 27. On August 12, 2021, Petitioner complied with Public Resources Code section
24 21167.5 by mailing to Respondents a letter stating that Petitioner planned to file a lawsuit
25 seeking to invalidate Respondents' approval of the Project and certification of the LRDP FEIR.
26 Attached hereto as Exhibit A is the true and correct copy of that letter.
27

1 28. On August 19, 2021, Petitioner complied with Public Resources Code section
2 21167.7 and Code of Civil Procedure section 388 by furnishing the Attorney General of the
3 State of California with a copy of the Petition. Attached as Exhibit B is the true and correct copy
4 of the letter transmitting the Petition to the Attorney General.

5 29. Pursuant to Public Resources Code section 21167.6(b)(2), Petitioner elects to prepare
6 the record of proceedings in this action. Concurrently with this Petition, Petitioner will file a
7 notice of election to prepare the administrative record.

8 30. Petitioner has no plain, speedy or adequate remedy in the course of ordinary law
9 unless this Court grants the requested writ of mandate to require Respondents to set aside their
10 certification of the FEIR and all approvals of the Project. In the absence of such remedies,
11 Respondents' approval and certification of the FEIR will remain in effect in violation of State
12 law, and Petitioner and its residents will be irreparably harmed. No money damages or legal
13 remedy could adequately compensate Petitioner and its members for that harm.

14 **STATEMENT OF FACTS**

15 31. Petitioner realleges and incorporates by reference the preceding facts.

16 **BACKGROUND**

17 32. UCB has represented in its FEIR and elsewhere that each constituent institution
18 within the University of California system is required to develop periodically a LRDP "that
19 guides [its] physical development, including land use designations, the location of buildings, and
20 infrastructure systems, for an established time horizon." The purpose of this requirement is
21 obvious: to present a single, comprehensive plan for that institution, not its constituent parts (i.e.,
22 individual departments or partial geographic areas).

23 33. The approval of an LRDP is subject to CEQA and requires the preparation of an EIR.
24 Among other things, the EIR for an LRDP must consider the "[e]nvironmental effects relating to
25 changes in enrollment levels" and relating to the overall projected demolition and construction
26

1 necessary to improve and (if needed) expand university facilities to accommodate the proposed
2 population growth (if any) set forth in the proposed LRDP. Once the LRDP is enacted and the
3 EIR for that LRDP approved, consequent construction projects are also subject to CEQA, and
4 may be addressed in a tiered environmental analysis based on an LRDP EIR. Because the final
5 EIR for the LRDP may be relied on in subsequent CEQA evaluations of future projects, it is
6 important that the EIR issued for the LRDP be comprehensive and satisfactory under CEQA.

7 THE PROJECT

8 34. From the Project's Draft Environmental Impact Report (DEIR), released on February
9 23, 2021, the public learned that the Project assumed a steep increase in UCB's population, from
10 the previously approved 33,450 students in the 2020 LRDP (published in 2005) to 48,200
11 students by the 2036-2037 academic year – a 14,750 student (or almost 50%) increase in student
12 enrollment – bringing the overall campus population to at least 70,000 (over 50% of the City's
13 entire current population). Neither the DEIR nor the subsequent FEIR substantively discussed
14 this projected population increase or provided sufficient information about that increase – such
15 as supported baseline population data – from which the public could ascertain the exact scope of
16 the proposed population increase and where these additional people were expected to live, work
17 or study, and commute.

18 35. UCB's DEIR and FEIR, as noted above, purported to discuss the environmental
19 impacts of the 2021 LRDP and the Anchor and Park developments; they did not discuss, except
20 incidentally, the proposed population increase.

21 36. **The LRDP Project:** The 2021 LRDP released at the same time as the DEIR was not
22 comprehensive. Instead of presenting a single plan for all sites inside and outside Berkeley that
23 comprise the modern UCB, the LRDP addressed only select sites in Berkeley, Oakland and
24 Contra Costa County. Those select sites included the original main campus (referred to as the
25 "core campus"), the Clark Kerr Campus, areas to the East of the "core campus" (the so-called
26 Hill areas) and select properties to the South and West of that core campus, but not additional
27

1 properties owned and/or leased by UCB and used in the normal course of its present operations.
2 It also did not include all construction that UCB has announced it intends to perform on its
3 properties in the time-period covered by the new 2021 LRDP, effective until 2036-37. These
4 omissions – both as to location and development plans – caused the information presented in the
5 DEIR and FEIR to be incomplete and confusing; essentially providing only a piece of a much
6 larger puzzle.

7 37. The 2021 LRDP proposes construction of approximately 8 million square feet of new
8 space, primarily in Downtown Berkeley concentrated along the Oxford Corridor, Berkeley's
9 Southside, and the Clark Kerr Campus. Instead of adding square footage for educational,
10 research, or much needed student housing, the LRDP proposes construction of hundreds of
11 thousands of square feet of new income-producing commercial, retail, event, and office space in
12 these locations with incidental amounts of academic and student housing elements.
13 It intends that that by 2036-37, it will have demolished over 40 landmarked and/or historic
14 structures and landscapes on the UCB campus and around Berkeley's predominantly Southside
15 to make room for its planned addition of greatly increased population, student housing,
16 educational, retail, conference, and commercial space.

17 38. For example, along the Oxford Corridor, the LRDP contains plans to build multiple
18 new, large structures on Oxford Street between Virginia and Bancroft, including a new 16-story
19 tower taking up the entire city block at Oxford and University, a new multi-story complex with
20 two floors of parking on what is left of the Oxford Tract (north of Oxford and Hearst), a large
21 underground parking structure to the East of the University/Oxford intersection, and a huge
22 (200,000 sq. ft.) commercial/residential structure on what is now Edwards Stadium (corner of
23 Oxford and Bancroft). Once the planned construction is completed, virtually every parcel along
24 both sides of Oxford between Hearst and Bancroft will have a UCB structure or be leased by
25 UCB, thereby extending the "core" campus Westward into Berkeley's already dense downtown.
26
27
28

1 **39. Anchor Project:**¹ The only specific details UCB provides for its massive Oxford
2 corridor development plans are for the Anchor project, where the high-rise will take up an entire
3 city block at the corner of Oxford and University. Anchor is being developed as part of a Public-
4 Private Partnership (P3) with a private partner that will hold a long-term lease and development
5 rights to the block-sized property. The structure will be massive: 16-stories complete with paid,
6 under-ground public parking and floors of large income-producing commercial, retail, event
7 spaces, and offices with exclusive student residential units above. The residences, which will be
8 exclusively available to about 700 transfer students (for a housing fee), all feature single
9 bedrooms with small suites each of which have kitchens, in-suite laundry, and lavish living
10 areas, as well as separate student-only fitness and yoga facilities and recreational spaces. The
11 project will require eviction of long-term, nonstudent tenants and demolition of their rent-
12 controlled apartment building (1921 Walnut Street) and of the Walter Ratcliff designed landmark
13 UC Garage. The height of the structure is well-above that previously agreed to by UCB or
14 contemplated in the Downtown design plan for that it collaborated in creating. [check].

15 **40. The Park Project:** will consist of two buildings to be built on People's Park: one
16 large L-shaped building formed by the intersection of a 17-story mixed-use tower on the
17 Northside and a somewhat lower tower along the Westside of the parcel; and one stand-alone
18 lower-rise building with office space on the Southside. The low-rise building may include some
19 supported public housing to be run by an unknown community organization. The larger tower
20 will contain a large retail area; little is disclosed about the remaining spaces although some
21 descriptions state they include residential, academic, and leisure areas.

22 **41.** The project will obliterate the landmarked Park and will require 22 days of pile
23 driving 70-100 feet subsurface that UCB admits may severely damage nearby national
24 landmarks, including the Anna Head School and architect Bernard Maybeck's masterpiece First
25 Church of Christ Scientist. UCB's mitigation strategy for dealing with vibration damage is to pay

26 _____
27 ¹ This project is referenced as "Project 1" in the FEIR and LRDP which then becomes confused with the Park
28 project that UCB decided to call "Project 2" in the same documents.

1 timely claims for damage and recommend that the (as yet unnamed) contractor or P3 developer
2 utilize a less destructive form of construction “if feasible.” No feasibility study was provided.
3 Likewise, no shade study was undertaken despite the fact that the L-shaped Tower will
4 permanently shade nearby properties, notably the famous wisteria arbor and windows of the
5 landmarked First Church of Christ Scientist. The FEIR also fails to explain how paying for
6 damage to the church, which UCB does not own, can replace decorative windows and other art
7 objects in the church when there are not artisans or materials today to carry out the restoration of
8 them.

9 PROCEDURAL HISTORY

10 42. UCB published a Notice of Preparation (NOP) on April 7, 2020 that stated in
11 pertinent part, “Notice is hereby given that the University of California, Berkeley will prepare an
12 Environmental Impact Report (EIR) for the University of California, Berkeley (UC Berkeley)
13 Long Range Development Plan (LRDP) Update (“LRDP Update” or “proposed project”). Despite
14 releasing the notice of the preparation of an EIR for the LRDP Update, the LRDP Update was not
15 released publicly until almost a year later (in February 2021).

16
17 43. After defining the proposed project as limited to the LRDP Update, the notice went
18 on to state:

19
20 The LRDP Update EIR will function as a Program EIR (pursuant to CEQA
21 Guidelines section 15168) that can be used in the environmental review of
22 subsequent campus development projects during implementation of the LRDP
23 Update. In addition to analyzing the environmental effects of campus growth
24 under the LRDP Update at a programmatic level, the EIR will also provide a
25 project-specific analysis of the environmental effects associated with the
26 development of two off-campus housing projects (i.e., Housing Projects #1 and
27 #2) with up to 2,050 beds for UC Berkeley students. These two projects would
28 likely be some of the first projects developed under the LRDP Update.

1 44. According to the notice, the land use planning area “for the LRDP Update and
2 associated EIR . . . includes properties owned by the UC Regents located within the City of
3 Berkeley, as well as areas of the Hill Campus located within the City of Oakland and a portion of
4 land located in unincorporated Contra Costa County.”

5 45. Although the notice contains several references to “growth,” the notice did not
6 announce a population increase at UCB or announce that the planned EIR would discuss the
7 environmental impacts of a planned population increase for UCB, including any student
8 enrollment increase. It also noted that “The LRDP Update does not set a future population
9 capacity for the campus.” The notice explained, “Population assumptions included in the LRDP
10 Update provide a foundation for understanding the campus’s long-term space needs.”

11 46. These population assumptions were described as follows: “The LRDP Update
12 planning assumption for the campus population is 48,200 students and 19,000 faculty and
13 staff in the 2036-37 academic year compared to 39,300 students and 15,400 faculty and
14 staff in the 2018-19 academic year.” The notice also stated, “The LRDP Update EIR will
15 use the 2018-19 academic year as a key baseline year to reflect existing environmental
16 conditions and will use the 2036-37 academic year to forecast the potential environmental
17 impacts of the LRDP Update.”

18 47. After the NOP was published, members of the public, including undersigned
19 counsel, and various community groups submitted written requests for documents and
20 information about the draft LRDP Update, the Project, baseline conditions, and related
21 information from UCB and the Regents. While UCB acknowledged receipt of these
22 requests, it largely ignored them and failed to produce responsive information and
23 documents, including materials that were explicitly referenced in the later-released DEIR
24 and FEIR.

25 48. The public’s ability to counter UCB’s stonewalling regarding existing
26 conditions and potential impacts of the Project and planned population and enrollment
27

1 increases was substantially hampered by the COVID 19 pandemic. Among other things,
2 the City of Berkeley implemented several emergency health orders, and UCB closed its
3 libraries and archives.

4 49. After issuance of the NOP, UCB proceeded with the EIR process. During this
5 process it disclosed some information about the Project and its impacts during public
6 meetings but concealed the full scope and impacts of the Project. For example, during the
7 scoping session, UCB presented slides that did not identify which historic resources it
8 intended to demolish. The attorney for BC4BP insisted in a comment letter that UCB was
9 required to share that information in its EIR and provide specifics.

10 50. The DEIR and 2021 LRDP were released on the same day – February 23,
11 2021 – which started the clock on the public’s comment period for the Project. The DEIR
12 and accompanying exhibits comprised thousands of pages. In conjunction with issuance
13 of the DEIR, and with no prior announcement, UCB released a revised best construction
14 practices document that was substantially different than the existing best practices
15 document. Rather than evaluating the proposed Project and mitigation measures pursuant
16 to UCB’s existing best practices document, the DEIR referenced and relied on the
17 proposed, but not yet adopted, best practices document, which was significantly more
18 lenient.

19 51. Due to the pandemic and related closures, many members of the public
20 requested short extensions of time within which to provide comments; all such requests
21 were denied.

22 52. BC4BP’s attorney² (and others) took exception in comment letters to the use of the
23 2018-19 academic year for setting the baseline when evaluating the impacts of increased
24 enrollment. By 2018-19, UCB had already increased its enrollment beyond the LRDP, published
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26
27 ² BC4BP’s attorney initially represented the Berkeley Architectural Heritage Association when it submitted some of
its comments. Subsequently, she became the attorney for BC4BP and submitted comments on its behalf to the FEIR.

1 in 2005. This issue continued through the FEIR with uses of charts relying on the 2018-19 time
2 period as setting the baseline for population increases.

3 53. During the comment period on the DEIR, many commentators, including experts
4 retained by law firms, responded with criticisms about the negative impacts from the proposed
5 LRDP. They also pointed out the deficiencies in the DEIR as described in the Introduction,
6 above. Members of the public asked questions in their comment letters about various aspects of
7 the Project and its environmental impacts. For example, the Berkeley Architectural Heritage
8 Association (BAHA) wrote a lengthy comment letter that posed numerous specific questions.

9 54. On July 7, 2021, UCB released their FEIR. The FEIR did not cure the DEIR's
10 significant deficiencies. Among other things, it revised the baseline dates for some categories of
11 impacts but not others (which created material inconsistencies and sowed confusion), ignored
12 comments, proposed alternate mitigation measures without any determination of feasibility or
13 proposed mechanism for enforcement, and dismissed specific questions about the existing and
14 future campus population as "irrelevant." Again, the public submitted many comment letters.
15 BC4BP submitted a comment letter and an expert report prior to the hearing on the Project.³ On
16 July 22, 2021, the Regents approved the Project. Attached as Exhibit C is a copy of the Notice of
17 Determination UCB filed with the State Clearinghouse on the same day.

18 55. **Negative Impacts:** As explained above, in the Introduction, the FEIR inadequately
19 discusses numerous impacts from the project. The FEIR particularly avoids providing an
20 adequate description of the Project's impacts, and providing baselines, mitigations, and feasible
21 alternatives in these areas: population increase (with substantial displacement of nonstudent
22 residents), noise (sound due to expansions of population and housing, and damage from
23 construction vibrations), air quality (including health risks to vulnerable populations), bird kill
24 from high-rise windows and loss of habitat, damage to and demolition of historic resources
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26
27 ³ At this point, in her comment letter, the attorney for BC4BP incorporated all of the prior comments from the
Berkeley Architectural Heritage Association's comments into those of BC4BP.

(landmarked structures) and cultural resources, greenhouse gases, traffic (VMT), and decrease in available public services (fire, police, sewer, etc.).

56. On July 22, 2021, the Regents approved the Project. Attached as Exhibit C is a copy of the Notice of Determination UCB filed with the State Clearinghouse on the same day.

FIRST CAUSE OF ACTION

Violation of CEOA

(Public Resources Code§ 21000 et seq.; State CEOA Guidelines)

57. Petitioner realleges and incorporates by reference the preceding paragraphs.

58. CEQA requires the lead agency for a project with the potential to cause significant environmental impacts to prepare an EIR that complies with the requirements of the statute, including, but not limited to, the requirement to analyze the project's potentially significant environmental impacts. The EIR must provide sufficient environmental analysis such that the decision makers can intelligently consider environmental consequences when acting on the proposed project.

59. CEQA further mandates that a lead agency may approve a project that would have significant, unavoidable environmental impacts only if the agency finds that the project's benefits would outweigh its unavoidable impacts.

60. Under CEQA, all the findings required for an agency's approval of a project must be legally adequate and supported by substantial evidence in the administrative record, and CEQA further requires that an agency provide an explanation of how the evidence in the record supports the conclusions the agency has reached.

61. Respondents failed to proceed in the manner required by law and violated CEQA by certifying an EIR that is inadequate and fails to comply with the requirements of CEQA and the CEQA Guidelines in numerous respects, discussed in the Introduction, above. The failings of the FEIR rendered it legally inadequate because:

- 1 a. The NOP failed to announce and the FEIR failed to discuss the contemplated
2 population increase at UCB – including a large student enrollment increase – as an aspect
3 of the Project, discuss the environmental impacts of that population increase, or consider
4 realistic alternatives to or mitigation measures for or relating to that proposed,
5 contemplated or assumed population increase, which circumstance rendered the project
6 description inadequate and the notice-and-comment period legally insufficient.
- 7 b. The misleading, vague, and understated baseline information in the project description
8 about the true extent of UCB’s plan to extensively increase its population violated CEQA
9 as did the partial revision of the baseline dates and data after the issuance of the DEIR
10 and without recirculating that DEIR to provide the public an opportunity to comment
11 before issuance of the FEIR. UCB was required to provide “an accurate, stable and finite
12 project description” to meet its legal obligations under CEQA. (*County of Inyo v. City of*
13 *Los Angeles* (1977) 71 Cal.App.3d 185, 193.)
- 14 c. The missing baselines prevented the decision-makers from making an informed
15 decision about the project and prevented the public from appreciating the true
16 extent of the Project’s negative impacts. As such, the FEIR failed its
17 informational purpose under CEQA. (*County of Amador v. El Dorado County*
18 *Water Agency* (1999) 76 Cal.App.4th 931, 952.)
- 19 d. The lack of substantial evidence to support many of the FEIR’s conclusions
20 that the Project will not cause a significant impact was not supported by evidence.
21 For example, the FEIR’s handling of the public services topic lacks substantial
22 evidence to support its conclusion that the Project will not cause a negative
23 impact on the environment. “[A]n agency may abuse its discretion under CEQA
24 either by failing to proceed in the manner CEQA provides or by reaching factual
25 conclusions unsupported by substantial evidence. (PRC, § 21168.5; *Sierra Club v.*
26 *County of Fresno* (2018) 6 Cal.5th 502, 512.)
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1 e. The FEIR failed to discuss the inconsistency between its decision to demolish or
2 damage 40 architecturally significant and landmarked structures and its existing policy
3 and procedure documents, namely the New Century Plan, the Master Landscape Plan, the
4 Historic Landscape Plan, the Design Review and existing best practices documents.
5 (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 191
6 Cal.App.4th 342, 379-380.)
7 f. The FEIR's failure to analyze and implement mitigations as to many of the impacts,
8 especially noise, cultural resources, public services, and population violated CEQA. UCB
9 was required to "adopt feasible mitigation measures or project alternatives to reduce the
10 effect to insignificance." (*Center for Biological Diversity v. Department of Fish &*
11 *Wildlife* (2015) 62 Cal.4th 204, 231.)
12 g. The FEIR's failure to respond to comments and answer questions violated a key
13 provision of CEQA – it was required to evaluate and respond to significant
14 environmental issues. (Pub. Res. Code, § 21092.5, subd. (a) and Guidelines §§ 15088,
15 15132, subds. (b-d); *Laurel Heights Improvement Assn. v. Regents of University of*
16 *California* (1993) 6 Cal.4th 1112, 1124.)
17 h. The FEIR could not legally skip analyzing feasible alternatives and go directly to a
18 Statement of Overriding Considerations. It was required to adopt "feasible mitigation
19 measures or project alternatives to reduce the effect to insignificance." (*Center for*
20 *Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 231.) This
21 it did not do.
22 i. Because the Regents chose to improperly resort to a Statement of Overriding
23 Considerations when the FEIR should have considered feasible alternatives and did not,
24 and because that decision violated CEQA, it "tainted the certification of the FEIR as a
25 whole. . . [and] severance findings under section 21168.9, subdivision (b)" are not
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allowable for this case. (*Sierra Club v. County of Fresno* (2020) 57 Cal.App.5th 979, 982.) As a result, the court should order an entire new EIR rather than a focused EIR. 62. Attached as Exhibit D is the Election to Prepare Administrative Record, filed with this Petition.

PRAYER FOR RELIEF

Wherefore, Petitioner prays for judgment as follows:

1. Alternative and peremptory writs of mandate directing Respondents to vacate and set aside their certification of the FEIR and all Project approvals, specifically those listed in the attached NOD;
2. Alternative and peremptory writs of mandate directing Respondents to comply with the requirements of CEQA, including requiring an entirely complete and full EIR, and to take any other action as required by Public Resources Code Section 21168.9;
3. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions restraining Respondents, Real Parties in Interest, and their agents, servants, and employees, and all others from acting in concert with Respondents on their behalf, from taking any action to implement the Project, pending full compliance with the requirements of CEQA and the CEQA Guidelines;
4. For a judicial determination and declaration from this Court that Respondents' actions in approving the Project violated CEQA, the CEQA Guidelines;
5. For costs of the suit; and
6. For an order awarding Petitioner its attorneys' fees under Code of Civil Procedure section 1021.5, and other applicable authority; and
7. For such other and further relief as the Court deems just and proper.

1 DATED: August 25, 2021

Veneruso & Moncharsh

2 *Leila H. Moncharsh*


3
4 By: Leila H. Moncharsh
5 Attorneys for Berkeley Citizens
6 for a Better Plan (BC4BP)
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VERIFICATION

I, Carrie Olson, am the Chairperson of Berkeley Citizens for a Better Plan, an unincorporated association and the Petitioner and Plaintiff in this action. I have read the foregoing First Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. The facts alleged in the above Petition and Complaint are within my own knowledge and I know these facts to be true, except as to matters alleged therein on information and belief.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration is executed on August 25, 2021 at Berkeley, California.



Carrie Olson

EXHIBIT A

DONNA M. VENERUSO (d.'09)
LEILA H. MONCHARSH

LAW OFFICES
VENERUSO & MONCHARSH
5707 REDWOOD RD., STE 10
OAKLAND, CALIFORNIA 94619
TELEPHONE (510) 482-0390
FACSIMILE (510) 482-0391

August 11, 2021

Regents of the University of California
1111 Franklin Street 8th floor
Oakland, CA 94607

Chancellor Carol T. Christ
Chancellor's Office
University of California, Berkeley
200 California Hall# 1500
Berkeley, CA 94720-1234

David M. Robinson
Chief Campus Counsel
University of California
Office of the President
1111 Franklin Street, 8th Floor
Oakland, CA 94607

NOTICE OF INTENT TO SUE

RE: 2021 LRDP and EIR – UC, Berkeley Campus, Approved on July 22, 2021

Dear Mr. Robinson, Chancellor Christ, and Regents of UC:

My law firm represents Berkeley Citizens for a Better Plan (BC4BP). Pursuant to Public Resources Code section 21167.5, we are informing you that we intend to file a Petition for Writ of Mandamus (Petition) in Alameda County Superior Court within the applicable statute of limitations. On July 22, 2021, the Regents approved the 2021 Long Range Development Plan (LRDP), including two building projects and certified a Final Environmental Impact Report (FEIR) for that LRDP (collectively, the "Project.") In our Petition, we will seek a court order setting aside: the Regents' approval of the Project, Statement of Overriding Considerations, all other related approvals, and requiring that the Regents provide a new and complete Draft EIR with circulation to the public. BC4BP will also request injunctive relief. In its action, BC4BP will challenge the Regents' approvals and certification of the EIR on the grounds that they violate the California Environmental Act (CEQA).

Document received by the CA Supreme Court.

The overall basis of the Petition is that: 1) the FEIR does not include baselines for purposes of determining the difference between current environmental conditions and post-project conditions; 2) there is no substantial evidence supporting the FEIR conclusions that many of the admitted significant negative impacts caused by the project have been reduced to “less than significant; 3) the Project description is incomplete, vague, and misleading; 4) the FEIR does not adequately answer commentators’ questions and statements; 5) The FEIR fails to provide evidence and responses requested by expert commentators; 6) the proposed mitigations in the FEIR are illogical in some places and overall, inadequate; 7) in many places, the FEIR relies on tables and charts, many of which are unsourced but then includes no analysis relevant to the project impacts; 8) by combining two building projects with the LRDP, the FEIR then confused the CEQA informational requirements for the two construction projects with what is necessary for a LRDP; 9) the FEIR did not explore feasible mitigations and alternatives, instead jumping over that necessary analysis and going directly to a statement of overriding considerations; and 10) attempted to brush under the rug the many deficiencies in the FEIR by relying improperly on a statement of overriding considerations. What UC prepared and labeled an “FEIR” is woefully below the CEQA legal requirements for an “informational document.”

BC4BP is willing to explore settlement of this matter without the need for litigation. If representatives of the UC Regents are interested in meeting soon to discuss this matter, please contact me. BC4BP and other commentators have written extensive comments during the administrative process leading to the Regents’ project approvals and certification of the FEIR. However, if you would like to explore BC4BP’s concerns further, please let me know a good time to meet.

Sincerely,

Leila H. Moncharsh
Leila H. Moncharsh
Veneruso & Moncharsh

LHM: lm

cc: Client

PROOF OF SERVICE

I am over the age of eighteen years and not a party to this action. I am employed in the county where this service initiated. My business address is VENERUSO & MONCHARSH, 5707 Redwood Road, Suite 10, Oakland, CA 94619

On the date specified below, I served the attached:

Notice of Intent to Sue

- ☒ (BY MAIL) placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail in San Francisco, California addressed as follows:
- ☐ (BY FEDERAL EXPRESS) placing a true copy thereof enclosed in a sealed envelope, prepaid, deposited with the Federal Express carrier/box in San Francisco, California addressed as follows:
- ☐ (BY MESSENGER) placing true and correct copies in envelopes with delivery charges fully paid for delivery by Silver Bullet Messenger Service this same day.
- ☐ (BY FACSIMILE) placing a true copy thereof into a facsimile machine addressed to the person and address shown below.

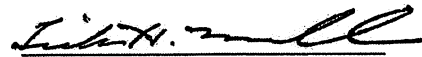
Regents of the University of California
1111 Franklin Street 8th floor
Oakland, CA 94607

Chancellor Carol T. Christ
Chancellor's Office
University of California, Berkeley
200 California Hall# 1500
Berkeley, CA 94720

David M. Robinson
Chief Campus Counsel
University of California
Office of the President
1111 Franklin Street, 8th Floor
Oakland, CA 94607

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: August 12, 2021


Leila H. Moncharsh

Document received by the CA Supreme Court.

EXHIBIT B

DONNA M. VENERUSO (d.'09)
LEILA H. MONCHARSH

LAW OFFICES
VENERUSO & MONCHARSH
5707 REDWOOD RD., STE 10
OAKLAND, CALIFORNIA 94619
TELEPHONE (510) 482-0390
FACSIMILE (510) 482-0391

August 19, 2021

Honorable Rob Bonta
California Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

Re: Notice of Filing of CEOA Litigation: *Berkeley Citizens v. Regents of the University of California, et al.*

Dear Attorney General Bonta:

Enclosed please find a copy of the Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in the above-captioned action. The petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt in the enclosed prepaid, self-addressed envelope.

Thank you for your attention to our request.

Sincerely,

Veneruso & Moncharsh

Leila H. Moncharsh
Leila H. Moncharsh

Encl.: Copy of Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief

LHM: lm

cc: Client

Document received by the CA Supreme Court.

EXHIBIT C

To: ☒ Office of Planning and Research
PO Box 3044, 1400 Tenth Street, Room 113
Sacramento, CA 95812-3044

From: University of California
Physical & Environmental Planning
1111 Franklin Street, 6th Floor
Oakland, California 94607-5200

**Subject: Filing of Notice of Determination
in Compliance with Section 21108 or 21152 of the Public Resource Code.**

State Clearinghouse Number: 2020040078

Project Title: 2021 Long Range Development Plan, Berkeley Campus

Project Applicant: University of California, Berkeley

Parties Undertaking Project: University of California, Berkeley

Project Location: UC Berkeley Campus

County: Alameda and Contra Costa Counties

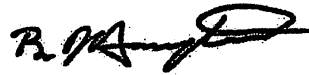
Project Description: The 2021 Long Range Development Plan (LRDP) for the UC Berkeley campus provides an updated land use plan to guide future physical development. The 2021 LRDP identifies a framework guided by population projections through the 2036-37 academic year, and a development program that identifies potential new building space and infrastructure to support improvement of existing facilities and program growth and expansion. The 2021 LRDP plans for a projected student enrollment of 48,200 and 19,000 faculty and staff by the 2036-37 academic year, an increase of approximately 8,500 students and 3,580 faculty and staff over the campus's population in 2018-19. This population projection necessitates that the campus plan for additional facilities to accommodate the programmatic needs of academic, research, and other supporting university functions. The 2021 LRDP plans for approximately 6.4 million net new gross square feet of campus and residential space and includes 11,730 net new student and faculty housing beds.

This Notice of Determination is to advise that the University of California ☒ Lead Agency has approved the above-described project on *July 22, 2021* and has made the following determinations:

1. The project ☒ will have a significant effect on the environment.
2. ☒ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures ☒ were made a condition of the approval of the project.
4. A Mitigation Monitoring and Reporting Program ☒ was adopted for this project.
5. A Statement of Overriding Considerations ☒ was adopted for this project.
6. Findings ☒ were made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval is available to the general public at: <https://lrdep.berkeley.edu/environmental-review>

Signature:



Brian Harrington

Title: Director, Physical and Environmental Planning

Date: *July 22, 2021*

Date Received for Filing at OPR:

EXHIBIT D

1 LEILA H. MONCHARSH (SBN 74800)
2 **VENERUSO & MONCHARSH**
3 5707 Redwood Road, Suite 10
4 Oakland, California 94619
5 Telephone: (510) 482-0390
6 Facsimile: (510) 482-0391

7 Attorney for Petitioner
8 **BERKELEY CITIZENS FOR**
9 **A BETTER PLAN (BC4BP)**

10 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

11 **BERKELEY CITIZENS FOR A BETTER**
12 **PLAN,**

13 **Petitioner and Plaintiff,**

14 **vs.**

15 **THE REGENTS OF THE UNIVERSITY OF**
16 **CALIFORNIA, an agency of the State of**
17 **California; CAROL T. CHRIST, in her official**
18 **capacity as Chancellor of the University of**
19 **California, Berkeley; Michael V. Drake, in his**
20 **official capacity as President of the University**
21 **of California; and DOES 1 THROUGH 20,**
22 **inclusive,**

23 **Respondents and Defendants.**

24 **HELEN DILLER FOUNDATION, a domestic**
25 **non-profit public benefit corporation;**
26 **PROMETHEUS REAL ESTATE GROUP,**
27 **INC., a California Corporation; and OSKI 360,**
28 **a limited liability California corporation, and**
DOES 21 THROUGH 40,

Real Parties in Interest.

No.

**PETITIONER'S NOTICE OF INTENT
TO PREPARE ADMINISTRATIVE
RECORD**

**[California Environmental Quality Act
(CEQA), Pub. Res. Code § 21000, et seq.);
Code of Civ. Proc. §§1094.5, 1085]**

1 Pursuant to Public Resources Code §21167.6(b)(2), Petitioner Berkeley Citizens for a
2 Better Plan notifies all parties that Petitioner elects to prepare the administrative record relating to
3 the above-captioned action challenging the July 22, 2021 decision of Respondents and Defendants
4 The Regents of The University of California, Carol T. Christ, and Michael V. Drake, approving the
5 2021 Long Range Development Project and all of its related approvals, including but not limited to
6 the Final EIR and Statement of Overriding Considerations. Respondents and Defendants are directed
7 not to prepare the administrative record for this action and not to expend any resources to prepare the
8 administrative record.

9 DATED: August 19, 2021

Veneruso & Moncharsh

10 *Leila H. Moncharsh*

11 By: Leila H. Moncharsh
12 Attorneys for Berkeley Citizens
13 for a Better Plan (BC4BP)
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1 **PROOF OF SERVICE**

2 I am over the age of eighteen years old and not a party to this within entitled action. My
3 business address is VENERUSO & MONCHARSH, 5707 Redwood Road, Suite 10, Oakland,
4 California 94619.

5 On the date specified below, I served the attached:

6 **FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND**
7 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

8 [XX] (BY MAIL) placing a true copy thereof enclosed in a sealed envelope with
9 postage thereon fully prepaid in the United States mail in Oakland,
California addressed as follows:

10 [] (BY FEDERAL EXPRESS) placing a true copy thereof enclosed in a
11 sealed envelope, prepaid, deposited with the Federal Express carrier/box in
San Francisco, California addressed as follows:

12 [] (BY HAND DELIVERY) placing true and correct copies in envelopes and
13 hand delivering same.

14 [] (BY FACSIMILE) placing a true copy thereof into a facsimile machine
15 addressed to the person and address shown below.

16 Thomas N. Lippe
17 201 Mission Street, 12th Floor
San Francisco, CA 94105

18 Office of General Counsel
19 University of California
20 1111 Franklin Street, 8th Floor
Oakland, CA 94607


21 Rebecca L. Davis
22 Lozeau Drury
23 1939 Harrison St., Suite 150
Oakland, CA 94612

The Helen Diller Foundation
Oski 360
Jaclyn Safier
1900 South Norfolk Street, Suite 150
San Mateo, CA 94403

Prometheus Real Estate Group
Rick D. Jacobsen
1900 South Norfolk Street, Suite 150
San Mateo, CA 94403

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Dated: August 26, 2021

27 
28 Leila H. Moncharsh

Document received by the CA Supreme Court

1 Save Berkeley's Neighborhoods v. The Regents of the University of California, et al.
2 Supreme Court Case No. S273160

3 **PROOF OF SERVICE**

4 I, Leila H. Moncharsh, am employed in the County of Alameda. My business address is
5 Veneruso & Moncharsh, 5707 Redwood Road, Oakland, CA 94619. I am over the age of 18 years
and not a party to the above-entitled action.

6 I am familiar with Veneruso & Moncharsh's practice for collection and processing mail
7 whereby mail is sealed, given the appropriate postage and placed in a designated mail collection area.
Each day mail is collected and deposited in a USPS mailbox after the close of each business day.

8 On February 21, 2022, I served Amicus letter on behalf of Berkeley Citizens for a Better
9 Plan Opposing Petition for Review of Stay

10 **XX BY FIRST CLASS MAIL** by causing a true copy thereof to be placed in a sealed envelope,
11 with postage fully prepaid, addressed to the following person(s) or representative(s) as listed below,
and placed for collection and mailing following ordinary business practices. Hon. Brad Seligman,
12 Alameda Superior Court, Department 23 Administration Building, 1221 Oak Street Oakland, CA
94612

13 **XX BY ELECTRONIC TRANSMISSION OR EMAIL** by causing a true copy thereof to
14 be electronically delivered to the following person(s) or representative(s) at the email address(es)
15 listed below. I did not receive any electronic message or other indication that the
transmission was unsuccessful.

16
17
18 **BY PERSONAL DELIVERY TO THE ADDRESSES LISTED BELOW.**

19 **SEE ATTACHED SERVICE LIST**

20 I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st
21 day of February, 2022, at Oakland, California.

22
23

Leila H. Moncharsh

SERVICE LIST

<p>Nicole H. Gordon Margaret M. Sohagi THE SOHAGI LAW GROUP, PLC 11999 San Vicente Blvd, Ste #150 Los Angeles, CA 90049--5136 emails: Ngordon@sohagi.com msohagi@sohagi.com</p>	
<p>Charles R. Olson Philip J. Sciranka Carolyn J. Lee LUBIN OLSON & NIEWIADOMSKI LLP 600 Montgomery Street, 14th Floor San Francisco, CA 94111 emails: colson@lubinolson.com psciranka@lubinolson.com clee@lubinolson.com msaephan@lubinolson.com jwilson@lubinolson.com</p>	<p><i>Attorneys for Appellants and Cross-Respondents:</i> The Regents of The University Of California; Michael V. Drake, in his official capacity as President of the University of California; University of California, Berkeley; Carol T. Christ, in her official capacity as Chancellor of the University of California, Berkeley</p>
<p>Alison Krumbein Office of General Counsel 1111 Franklin Street, 8th Floor Oakland, CA 94607 email: alison.krumbein@ucop.edu</p>	
<p>David M. Robinson UC Berkeley, Office of Legal Affairs 200 California Hall, #1500 Berkeley, CA 94720-1500 email: dmrobinson@berkeley.edu</p>	
<p>Amrit S. Kulkarni Meyers Nave 707 Wilshire Boulevard, 24th Floor Los Angeles, California 90017 email: akulkarni@meyersnave.com</p>	

<p>Timothy D. Cremin Edward Grutzmacher Meyers Nave 1999 Harrison Street, 9th Floor Oakland, California 94612 emails: tcremin@meyersnave.com egrutzmacher@meyersnave.com</p>	<p><i>Attorneys for Appellants and Cross-Respondents:</i> The Regents of The University Of California; Michael V. Drake, in his official capacity as President of the University of California; University of California, Berkeley; Carol T. Christ, in her official capacity as Chancellor of the University of California, Berkeley</p>
<p>Winter King Robert Perlmutter Lauren M. Tarpey SHUTE MIHALY &WEINBERGER 396 Hayes Street San Francisco, CA 94102 emails: king@smwlaw.com Perlmutter@smwlaw.com ltarpey@smwlaw.com jmiao@smwlaw.com</p>	
<p>Farimah Brown, City Attorney Christopher D. Jensen, Deputy City Attorney Berkeley City Attorney's Office 2180 Milvia Street, Fourth Floor Berkeley, CA 94704 Tel: (510) 981-6998 Fax: (510) 981-6960 emails: FBrown@cityofberkeley.info cjensen@cityofberkeley.info</p>	<p><i>Attorneys for City of Berkeley</i></p>

Amanda Monchamp
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emails:
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Attorneys for Real Parties in Interest:
American Campus Communities, American Campus Communities Services, Inc.,
American Campus Communities Operating Partnership LP

Thomas N. Lippe
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201 Mission Street, 12th Floor
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Document received by the CA Supreme Court.